



*United States Agency for International Development*  
Sarajevo, Bosnia and Herzegovina

**PRIORITIES AND PARTNERS:**  
**DEVELOPING THE RULE OF LAW**  
**IN BOSNIA AND HERZEGOVINA**

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**USAID/Bosnia Democracy Office**

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## **TABLE OF ACRONYMS**

ADR	Alternative Dispute Resolution
AJPRS	Association of Judges and Prosecutors of the RS
ALPS	Administrative Law and Procedural Systems Reform Project of IRIS
BiH	Bosnia and Herzegovina
CC	Constitutional Court
CEELI	Central Europe and Eurasia Law Initiative of the American Bar Association
CHF	Cooperative Housing Foundation
CIDA	Canadian International Development Agency
CIPRU	The Criminal Institutions and Prosecutorial Reform Unit of OHR
COE	Council of Europe
CSpi	Public Advocacy Center of CEELI
DFID	British Department for International Development
DOJ	United States Department of Justice
DPA	Dayton Peace Accord
ECHR	European Convention on Human Rights
ERO	Economic Restructuring Office of USAID
EC	European Commission
EU	European Union
FOIA	Freedom of Information Act
GTZ	German International Development Program
HRC	Human Rights Chamber
HJPC	High Judicial and Prosecutorial Council
ICITAP	International Criminal Investigative Training Assistance Program of DOJ

IJC	Independent Judicial Commission
IMF	International Monetary Fund
IRIS	Institute for the Reform of the Informal Sector of the University of Maryland
JPTC	Judicial and Prosecutorial Training Center
JSAP	Judicial System Assessment Program of the United Nations
KM	Convertible Marks
MOJ	Ministry of Justice
NGO	Non-governmental Organization
OHR	Office of the High Representative
OPDAT	Office of Overseas Prosecutorial Development, Assistance and Training of DOJ
OSCE	Organization for Security and Cooperation in Europe
RIA	Regulatory Impact Assessment
RLA	Resident Legal Advisor of DOJ
ROL	Rule of Law
RS	Republika Srpska
SC	Supreme Court
SIDA	Swedish International Development Agency
UNHCR	United Nations High Commission for Refugees
USAID	United States Agency for International Development
USG	United States Government

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**PRIORITIES AND PARTNERS:  
DEVELOPING THE RULE OF LAW IN BOSNIA AND HERZEGOVINA**

**Executive Summary**

**I. Introduction**

Between February 24 and March 13, 2003, a four person team conducted an assessment on behalf of the USAID/Bosnia Democracy Office in Sarajevo of the rule of law (ROL) sector in Bosnia and Herzegovina (BiH). The primary objectives for the assessment were to review and assess current ROL efforts in BiH, identify and prioritize needs in the ROL sector, and to recommend prioritized programs and approaches for the U.S. government (USG) generally and USAID more specifically for the next 3 to 5-year period in this crucial sector.

Strengthening the ROL in BiH has recently received renewed attention from the international community. During the past couple of years, largely through laws imposed by the Office of the High Representative (OHR), BiH has taken some important steps forward, including imposition of the new laws on the High Judicial and Prosecutorial Councils. New codes on criminal procedure, criminal offenses, civil procedure, and enforcement of civil judgments are expected to be enacted by the relevant parliaments soon. Important new institutions have been created, including the High Judicial and Prosecutorial Councils (HJPCs), which are currently implementing a process for the review and appointment of all judges and prosecutors in both entities and which will soon take over management and budgeting responsibilities for the courts, as well as oversight for training and ethics; a new BiH level State Court (and prosecutor's office), responsible for hearing important organized crime cases, war crimes cases, and other matters of state jurisdiction; and a new BiH level Ministry of Justice (MOJ), which, among other things, will be responsible for helping to harmonize law and practice among the state and the entities.

While the achievements have been significant, many challenges remain. As a preliminary matter, the team found that the Bosnian legal community is not deeply enough involved in the process of reform and could even be said, at least in some instances, to be alienated from it, a situation to which parts of the international community contribute. OHR's authority to impose legislation and remove officials means that reform can move forward more quickly than in some other countries, but it also enables the various governments in BiH to cede decision-making to OHR and shirk their responsibilities to the citizens. There are at least two serious repercussions: first, developing the capacity for true self-governance, including the messy democratic business of reaching compromises, is stilted. Second, the citizens, who feel that they are not consulted in the development of the law, have little ownership in it, and do not feel bound by it. Accordingly, the team recommends that the international community work towards indigenizing the process of legal reform. For the USG, this may involve shifting some funding from direct support of international organizations to technical assistance aimed at building the capacity of local governmental and non-governmental organizations involved in legal reform.

As a part of the process of indigenizing reform, the international community should develop a joint working group with key Bosnian institutions that would help to

guide future reforms. This group could develop a strategic vision and facilitate donor coordination, two other areas of overarching concern.

In addition, the team recommends that more emphasis be placed on the implementation of new laws. While drafting new legislation is relatively simple, the changes that are being introduced in some cases, such as with the criminal procedure code, are almost seismic in nature. Implementation requires not only training of judges, prosecutors, lawyers, and police (as is being done, to a large degree), but also the embedding of experts into key institutions, and engaging in public education.

Finally, in terms of resource targeting, the review of donor supported programs revealed a possible over-emphasis on law enforcement matters. For a variety of reasons, this clearly is essential work but the team felt that a greater emphasis needs to be placed on the pressure points where citizens are more likely to encounter the justice system, such as in the administrative law area, with particular attention to the linkages between central and municipal levels of government. An increased emphasis on commercial law, to help foster the economic development that the country so desperately needs, which will be addressed at least in part by a program to be designed and implemented by USAID's Economic Restructuring Office (ERO), is also to be welcomed. Even in the area of criminal law, the team observed an important gap, in the representation of indigent defendants. Bar development and access to justice are two related issues that have been under-emphasized.

All of the following recommendations are important, and in an ideal world would be pursued. Recognizing resource restrictions, however, the team considers the following, in order of priority, to be the most urgent for USG programming:

- First, build the capacity of the HJPC through training and shadowing of key personnel to prepare it for its new tasks of managing the courts and securing funding for them. (Recommendation III.1).
- Second, improve the implementation of the emerging legislative framework, in particular the new procedural codes, by embedding experts within key institutions (judiciary, prosecution bodies, and the bar), engaging in public education, and strengthening ongoing training programs. (Recommendation II.2).
- Third, implement a uniform and nationwide court administration project that would address current backlogs and introduce modern case management procedures. (Recommendation III.2).
- And finally, begin the process of establishing a countrywide legal aid system by conducting an in-depth assessment and, in conjunction with local authorities and other donors, developing an implementation plan. (Recommendation IV.1).

These and other recommendations and findings, some with ramifications for the broader donor community and for the Bosnians themselves, are set out in detail below.



## **II. Legislative Development and Implementation**

### *1.a. Strengthen the State MOJ: Build Local Capacity to Draft and Harmonize Legislation*

Goal: Reverse the current process of legislative drafting so that Bosnians are making and passing their own laws with the assistance, where appropriate, of the international community, instead of the other way around. A secondary goal would be to assist the local partner (e.g., the State MOJ) to take a leading role in coordinating legislative drafting assistance, by establishing a clearinghouse to keep track of which organizations are working on which laws, determining which drafts may address similar issues, and ensuring that those issues are addressed in a uniform fashion. This process should also be geared to result in greater harmonization of the legislative framework at the state and entity levels. The ultimate goal is for more laws, developed with full local participation and ownership, to be enacted by the assemblies rather than imposed by OHR.

Local Partners: A State governmental body, such as the State MOJ, or a local NGO or think-tank dedicated to legislative development. The State MOJ would clearly need extensive assistance in building its capacity to do this work, but providing that assistance would also build the credibility and sustainability of this new State-level organization.

Donor Role: This will take a concerted effort on the part of the entire donor community, and OHR must take the lead. As a part of this process, OHR and other leaders in the international community should expend more capital in working with the local political leadership and citizens themselves to engage with OHR in the rule-making process and to reach compromises among themselves that are acceptable to OHR. OHR should seek to include governmental representatives on working groups that draft legislation. The USG can help the targeted local partner (e.g., the MOJ) by providing material support and extensive technical assistance to help it put into place processes for reviewing, harmonizing, and drafting legislation. This project could and should be implemented in conjunction with the following recommendation relating to legislative transparency.

Timeframe: 2003-2008

### *1.b. Improve Transparency of Legislative Processes*

Goal: Improve the transparency of and level of public participation in legislative processes, as practiced both by OHR and government bodies, in particular the State MOJ if Recommendation 1.a., above, is implemented. In order to accomplish this goal, OHR and the other lawmaking bodies should conduct open hearings on draft legislation, include more local Bosnian institutions (such as the bars and the law schools) in the drafting process, and encourage professional groups and NGOs to speak out publicly on draft legislation.

Local Partners: State and entity assemblies, the State and entity level MOJs, NGOs, professional (bar and judicial) organizations, law schools.

Donor Role: Again, OHR must take the lead on this and set an example for the local legislative bodies and the State MOJ to follow in terms of transparency and

inclusiveness. Existing USG programs can help to build linkages between OHR and the bar associations, judicial associations, law faculties, NGOs, and other groups interested in legislative development so that those groups are consulted as a matter of course, and on an institutional level, rather than on the current ad hoc basis. At the same time, current USG grantees and contractors working with these groups should help them to build their capacity to engage in legislative advocacy. In addition, OHR and governmental legislative drafting groups should pay more attention to the political process of law making, by involving representatives or assembly staff members on the drafting groups, in an effort to improve the likelihood that the laws will be passed rather than imposed.

Timeframe: 2003-2008

## *2. Technical Assistance and Training to Legal Professionals: Improve Implementation of New Legislation*

Goal: As in many countries in transition, perhaps too much attention is paid to drafting legislation rather than implementing it. Considering the enormous shifts in BiH's evolving legislative framework, in particular relating to the procedural codes, the donor community should emphasize implementation of these new codes, which will require greater training efforts and more institution building, as well as targeted public education campaigns.

Local Partners: Judges, prosecutors, members of the bar.

Donor Role: The USG should take the lead in assisting key institutions to implement the new codes. In terms of training, the new Judicial and Prosecutorial Training Centers (JPTCs) will conduct future training of judges and prosecutors, but a lacuna now exists, pending the creation of those centers. In the meantime, various USG programs (and others in the donor community) are picking up the slack. That work should continue. One gap is that there is no training institution for lawyers, and an effort should be made either to enable lawyers to attend some of the future institutional trainings or for the bars to create their own training institution. While more training needs to be done (the training that has taken place for the bar, for example, has only scratched the surface of the needs), training alone will not be sufficient. Ensuring implementation will also require embedding experts within key institutions to act as a resource, developing and disseminating manuals, and teaching future judges, prosecutors, and private lawyers – in other words and ensuring that law school professors have and use in their courses the commentaries that are developed for judges, prosecutors, and lawyers. Some train the trainers sessions for law professors would also be appropriate. In addition, observers can monitor important cases to see how the new codes are being used in practice, and to recommend changes to training courses or the laws themselves, as required. Most importantly, a holistic approach needs to be taken. Some substantial plans are in place to provide technical assistance to judges and prosecutors, particularly on new criminal codes, but experts also need to be placed with the lawyers, as a resource and a point of ongoing training with the bars. Finally, a certain amount of targeted public education may also be necessary so that the public knows how to use the new legislation and so it does not feel threatened by an apparent loss of existing rights and procedures. All of this could be started immediately by contractors and grantees that are already in place. It should be noted that, given BiH's goal of further European integration, as well as the fact that BiH's legal traditions are firmly based in continental law, it is logical for the USG to

cede the area of substantive legislative drafting to European organizations and to focus instead on implementation.

Timeframe: 2003-2007

### *3. Complete the Preparation of a Full Local Legal Database*

Goal: To establish a fully searchable legal database that would include all legislation applicable in BiH, as well as court decisions from the constitutional and supreme courts, and important governmental regulations. Such a database would not only improve access to the law for judges, prosecutors, and lawyers, it would also facilitate the process of streamlining and harmonizing the legislative framework.

Partner: The State MOJ.

Donor Role: GTZ, the German donor program, has already taken some important steps in this regard, but its work has been limited to the Federation. Other donor organizations can help to extend this effort to cover all laws and important court decisions in the country.

Timeframe: 2004-06

### *4. Conduct a Regulatory Impact Assessment*

Goal: Conduct a Regulatory Impact Assessment (RIA). Although a full review of the process of legislative drafting was beyond the scope and capacity of the team's work, it became clear that there is a gap, both at OHR and at the government levels, between the anticipated results of new legislation and the reality of how new legislation can be implemented. The RIA would review how the government and OHR collect and use information and statistics in the development of legislation, and how they allocate funding and resources when legislation is implemented.

Partners: The assemblies and MOJs.

Donor Role: Again, this is a project that would require full OHR participation and backing. The World Bank has experience in conducting RIAs, and would be a natural organization to conduct one in BiH. The British Department for International Development (DFID) is currently working with the MOJs and Ministry of Interior on budgeting and funding in the justice sector, and should be involved as well.

Timeframe: 2003-2005

## **III. Judicial/Court Reform**

### *1. Build the Capacity of the HJPC and Improve Financial Support to the Courts*

Goal: To build the capacity of the HJPC to manage the court and prosecutorial systems. The new HJPC is charged with much of the managerial oversight of the courts that was previously done by the MOJs, including developing budgets, overseeing appointments and ethical investigations, and overseeing the work of the JPTCs. Current law suggests some conflict between the authorities of the MOJs and the HJPC with respect to court budgets, but the Independent Judicial Commission indicates that such conflicts should be resolved in the near future. In any case, the HJPC will need help developing and training a full time staff, including the executive

director, as well as technical assistance, mentoring, and training in budget development, lobbying for budget allocations, overseeing ethical investigations, and overseeing the JPTCs. As a part of the budgeting process, the donor community should encourage the entities and the State to agree (by legislation or otherwise) to allow a percentage of the fees and fines that the judiciary generates be returned to the court system, to allow adequate financing and development of the courts. Such a program could and should be done in conjunction with the court administration reform program that is described in the next recommendation.

Partner: The HJPC and the IJC (until the end of its mandate).

Donor Role: This is an area where the USG can take the lead by, for example, providing experts to shadow and assist key positions at the HJPC as they begin their work. Additional expertise and mentors, as well as material support, will be needed to help with the more specific areas of responsibility, such as court reforms, budgeting, ethics, and supervising training.

Timeframe: 2003-2007

## 2. *Court Administration Reform*

Goal: To help the judiciaries systematically address the current case backlog and to put into place systems for efficiently handling their future caseload.

Partners: The HJPC, the judiciaries.

Donor Role: Although some in the donor community are already working on this issue, in limited capacities, and a more in-depth assessment is being prepared by the USAID Economic Restructuring Office (ERO), the donor community and the judiciaries in BiH need to take a more holistic approach to the issue of court administration and caseload. For example, citizens, it seems, file the same claim in multiple jurisdictions, such as with the court system, the HRC, and the ombudsmen. Other claims may no longer be ripe, insofar as a settlement may have been reached or the need for the lawsuit was vitiated by executive or OHR action. Technical assistance provided by the USG could help the various systems review the older pleadings, determine whether they are still ripe for review, and if they are prioritize them for immediate action (if they are no longer ripe, they should be dismissed and the docket cleared). The new Bosnian judges, and in particular the court presidents, need to take the lead in addressing the backlog, and be willing to handle more cases than they are required to under the current quota system (which perhaps should be done away with). Looking to the future, and based on the existing studies and pilot programs, new case tracking, case management, docketing, and automation techniques should be developed and introduced, but only on a national level, not a pilot basis – the country is simply not that large and the costs are not that great. The donor community needs to work closely with the Secretariat of the HJPC on the issue of court administration and management. In cooperation with the HJPC, donor organizations that have the funding and expertise to implement the reforms on a national basis should be identified. The implementation of the new procedural codes, which provide some mechanisms for more efficient judicial processes, should be hastened, with in-depth training for judges and clerks. In general, clerks should be given more responsibilities and be trained to handle them. Finally, another significant cause of delay is the failure to execute judgments. Although a new law on this is expected to pass the Entity Parliaments sometime this year and some training has already been conducted, judges with whom the team met did not seem familiar with

the law, and as with the other areas of new legislation a greater emphasis needs to be placed on implementation, which may require the “shadowing” of the enforcement clerks and additional training for the judicial police.

Timeframe: 2003-2007

### *3. Conduct Targeted Training of Judges*

Goal: Although the JPTCs should in the medium to long term provide the training that judges need, there are some areas of specific need that are not being addressed and in which training is required immediately. As noted above, this continued training is an important part of the recommended approach for improved implementation of the legislative framework.

Partners: HJPCs and the judicial associations.

Donor Role: The JPTCs are slated to receive significant support from the COE, and so the USG should step back from providing them with significant funding at this time. Considering, however, that the JPTCs may not be operational for a while yet, the USG should maintain its high level of training activities for judges, in particular on the new procedural codes. (As discussed elsewhere, more than training should be provided; technical assistance, in the form of experts embedded with the judiciary and training manuals should also be provided). ERO should consider providing intensive training to the new commercial judges, once they have been selected, on issues such as bankruptcy, competition law, and intellectual property. The new State Court seems to be receiving sufficient training from other sources, but the USG may want to start to help it address its future war crimes docket by providing training and the technology necessary to link it with the Hague court, an area where this new court is not receiving any assistance.

Timeframe: 2003-2007

## **IV. Access to Justice**

### *1. Establish a Legal Aid (Criminal/Civil) System*

Goal: To develop a public defender or legal aid system for BiH. Even under the new criminal procedure code, only criminal defendants who are facing potentially three years or more in prison have the right to free representation. This is still a considerable period of confinement.

Partners: The MOJs, NGOs.

Donor Role: Establishing a national public defender or legal aid system is an expensive undertaking, but it is important because the lack of meaningful representation, at both the criminal and civil levels, jeopardizes other reforms and endangers public confidence in the legal system. In addition, under the new criminal procedure code, a greater emphasis is placed on the role of the advocate, and so it will be even more important for the indigent accused to have access to capable counsel. Establishing a legal aid center will require close donor coordination and, in order to be sustainable, a strong governmental partner. The Open Society Institute (Soros) is the only donor that has taken a direct interest in this area, and would be an important partner, but it does not have the capacity or resources to develop a national or even entity level public defender’s office. The role of the USG at this point should be to

catalyze the donor community and the governments in BiH to recognize the importance of this issue. It should do this by commissioning an in-depth study of the issue, followed by a conference with the government and other donors on improving access to justice. The report should begin to look at issues relating to the size of such an office, make cost estimates, determine at what levels citizens would be entitled to representation in criminal and civil matters, etc. In the longer term, the EU and other donors will need to be brought in (the legal framework should perhaps be based on European models, for example), and USG assistance perhaps can be limited to training and technical assistance. In addition, the creation of such a system should also include a strong public education component.

Timeframe: 2004-2007

## **V. Criminal Justice Reform**

Other than supporting the HJPC and establishing the public defender system described above, the team does not make any recommendations for new programs relating specifically to criminal justice reform. The DOJ and ICITAP programs appear to be largely successful, but a full evaluation was beyond the scope of this assessment. A more comprehensive evaluation should be undertaken in the near future in order to specifically identify impact, inform 2004 budgeting decisions, and establish a timeline for phasing out these programs. As noted in other recommendations, additional initiatives in terms of training and technical assistance to the bar and other institutions are necessary to ensure fair and full implementation of the new criminal and criminal procedure codes.

Finally, the need for reform of the penitentiary system came up frequently, but was beyond the scope of the team's review. This area also warrants further study and recommendations.

## **VI. Bar Reform**

The USG should continue its efforts in bar development and professionalization, including facilitating the dialogue on a potential merger of the bars in the two entities. Two other recommendations for bar reform are largely subsumed in the other recommendations. First, the donor community can help to develop the bars' legislative advocacy skills so that the opinions of the bars are heard in the development of legislation. The Bar should create a committee on legislative advocacy that would work to address this concern, and to improve lines of communication both with OHR and the Federation and State Assemblies and MOJs. USAID programs should be able to assist them to develop this "lobbying" capacity. Second, recognizing the increased importance of the role of the advocate in Bosnia's evolving legal system, the bar needs to take an institutional approach towards training its members, either by being included in the training already provided and planned for judges and prosecutors, or by establishing its own legal training center.

Timeframe: 2003-2007

## **VII. Administrative Law**

Goal: To strengthen administrative laws, procedures, and practices in order to improve access to justice.

Local Partners: Municipal governments, NGOs, media, MOJs

Donor Role: The current USAID administrative law project, which is limited in scope to the Federation, should be monitored and, if successful, should be expanded nationally. In particular, strengthening transparency in rulemaking at the municipal level, improving the application of administrative law at the municipal and basic court levels, improving the municipal and cantonal inspectorate systems, expanding law clinic programs, and providing additional legal training to judges and other professionals should be adopted countrywide. A part of monitoring the success of these programs may involve conducting surveys or focus groups to test the pulse of the country with respect to the state of service delivery. Success may also indicate a greater emphasis on public education campaigns, but only to reinforce concrete results. An essential component of administrative and municipal reform efforts in the ROL sector is citizen advocacy. One USAID program has successfully established a legal advocacy center for pursuing free access to public information by NGOs, journalists, and other citizens. Such activities should be expanded and should be incorporated into administrative law projects, which, among other things, seek to improve the access to justice at the grassroots level. Similar advocacy initiatives could be structured to include other segments of society and address other legal needs. "Supply side" reform may be furthered through USAID administrative law projects that rationalize procedures and laws in a given sector. A project to codify and rationalize the laws and regulations in that sector (e.g., urban policies that affect business or housing) should be considered.

Timeframe: 2004-2008

## **VII. Legal Education**

Although addressing the problems that plague the legal education system is critical, the USG should not become too deeply involved in legal education reform, pending the full assessment that the Council of Europe (COE) will soon conduct. Once that report is issued, the USG should review it to determine whether cooperative interventions would be appropriate. In the meantime, USG programs should, at the very least, ensure that professors have copies of the new procedural codes, and commentaries on them, and that they are teaching these codes in the classroom. One of USAID's current grantees or contractors should convene a series of train the trainers sessions on these new codes to make sure that the professors understand them and will teach them. The USG could also provide some transitional support, pending the introduction of the COE program, by endowing a competition of some kind for which law professors would apply for funding to develop new courses on emerging topics, in particular relating to commercial law. This could be implemented by existing USAID programs.

**PRIORITIES AND PARTNERS:  
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**I. INTRODUCTION**

**A. Background**

Between February 24 and March 13, 2003, a four person team conducted an assessment on behalf of the USAID/Bosnia Democracy Office in Sarajevo of the rule of law (ROL) sector in Bosnia and Herzegovina (BiH).<sup>1</sup> The primary objectives for the assessment were to review and assess current ROL efforts in BiH, identify and prioritize needs in the ROL sector, and to recommend prioritized programs and approaches for the U.S. government (USG) generally and USAID more specifically for the next three to five year period.

The legal system of BiH traces its roots to the Austro-Hungarian Empire that ruled the region between 1878 and the outbreak of the First World War. That system was one of the more sophisticated of its day, and jurists from BiH point with pride to their legal heritage. Even after the Second World War, when BiH was a part of Socialist Yugoslavia, the legal system, which included a constitutional court and a relatively independent judiciary, was one of the more liberal and advanced in Central and Eastern Europe. The legal system, along with much of the rest of the region's social structures, was shattered by the disintegration of the Yugoslav state and the subsequent tripartite ethnic war among Serbs, Croats, and Bosniaks. The war, which raged for three years from 1992 – 95, was marked by “ethnic cleansing” and the extended and brutal siege of Sarajevo. The war ended only upon the intervention of NATO and a peace accord agreed to by (or imposed on) the warring parties in Dayton, Ohio in 1995.

Annex 4 of the Dayton Peace Accord (DPA) set forth a new constitution for BiH. Under that constitution, the State of BiH was divided into two entities, the Republika Srpska (the RS) and the Federation of Bosnia and Herzegovina (the Federation). The RS consists mostly of the ethnic Serb parts of the country, and the Federation, made up of 10 cantons, covers the predominantly ethnic Bosniak and Croat parts of the country. Five of the cantons are dominated by Bosniaks, three have a Croat majority, and two are mixed Croat and Bosniak. A third part of the country, Brcko, was set aside as essentially an international foreign protectorate. Each entity has its own prime minister, assembly, and court system. The Dayton agreement called for the creation of only a very limited national government, with a tripartite

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<sup>1</sup> The team consisted of Mark Dietrich, an independent consultant and attorney based in New York; Jose Garzon, of USAID's Europe and Eurasia Bureau in Washington; Robyn Goodkind, USAID's Senior Democracy Advisor in BiH; and Margaret O'Donnell of the United States Department of Justice in Washington. Jasna Kilalic, a lawyer and program manager for USAID in Sarajevo, also worked with the team. During the course of the review, the team met with over 90 representatives of the donor community and the local legal communities in Sarajevo, Banja Luka, Mostar, and Zenica, and collected and reviewed numerous reports and other documents. A list of the persons interviewed is annexed as Appendix A and the list of documents reviewed is annexed as Appendix B. Despite its best efforts to capture as much information as possible, the team is keenly aware of the limitations involved in conducting a survey of this nature within a relatively limited timeframe. Comments and corrections are encouraged and should be submitted to [MDietrich@msn.com](mailto:MDietrich@msn.com) and [RGoodkind@usaid.gov](mailto:RGoodkind@usaid.gov).



rotating presidency and a national assembly, but only one national court, the State Constitutional Court (State CC). (Another national court, the State Court, described *infra*, was created in May 2000). The DPA also established an international civilian authority, the Office of the High Representative (OHR), to supervise the implementation of the peace plan and the development of a new government for BiH. OHR has the power to impose and rescind legislation at all levels of government, as well as to remove individuals from government positions.

The RS and the Federation have parallel legal systems. The RS has a constitutional court that hears matters related to the RS constitution, a supreme court that acts as the final court of appeals for most matters in the RS, and two tiers of lower courts, the higher of which are called district courts and the lower of which are called basic courts. These courts are managed by the RS Ministry of Justice (RS MOJ). The Federation also has a constitutional court and a supreme court, as well as municipal and cantonal courts in each canton. The cantonal and municipal courts are largely funded and managed by the 10 cantonal ministries of justice.

Needless to say, the legal framework that has developed under the DPA is extraordinarily cumbersome, with conflicting laws drafted and implemented and interpreted by parliaments, agencies, and courts from (at a minimum, not even counting the 10 cantons) two different levels of government (the State and the two entities). Several representatives of the international community argued passionately and convincingly that while the DPA succeeded in stopping the war, it does not provide the basis for a viable nation-state on the territory of BiH. Arguably, a country with a population of less than four million cannot afford the inefficiencies that are inherent to the current structure, and the economic development of the nation requires the harmonization of laws and practices that is unlikely to occur under the current framework. These critics suggest that the DPA should be dispensed with, together with the cantonal system, and that a new legal system which would provide the basis for a more unitary state, be crafted to replace it. The team was made acutely aware of the limitations on legal reform inherent to current structures based on the DPA, but has decided to confine its recommendations to what it believes is feasible under the DPA. At some point the DPA may well need to be revisited and a new constitution drafted, but that will be at a time for the Bosnians to determine. (It should be noted that most people in the RS who were interviewed by the team seemed, at best, interested in maintaining the status quo rather than pursuing a merger with the Federation.) Nevertheless, the recommendations that follow do seek to build further linkages between the two entities, encourage further harmonization of their legislative frameworks, and to build the State and municipal level government agencies that will provide the cornerstones for a more viable and efficient state structure in the future.

## B. General Observations

### *Alienation and Building Local Capacity*

One of the strongest impressions made upon the team is the sense of alienation that many in the Bosnian legal community feel from the process of ROL reform, which is perhaps symptomatic of a larger chasm that exists between Bosnian citizens and their governments. This alienation or distrust is probably due, in part, to a lack of confidence in government structures based on the fiasco – a civil war – that resulted

when the citizenry last placed its trust in government. However, the international community, as represented by OHR, contributes to and, to a certain extent, enables this alienation. OHR's authority to impose legislation and remove officials means that the various governments in BiH can cede decision-making to OHR and shirk their responsibilities to citizens. There are at least two serious repercussions: first, developing the capacity for true self-governance, including the messy democratic business of reaching compromises, is stilted. Second, the citizens, who feel that they are not consulted in the development of the law, have no ownership in it and thus do not feel bound by the rule of law. The international community needs both to involve Bosnians more in the process of planning and prioritizing legal reform activities overall and, more specifically, to work to enable the Bosnians to make and pass their own laws – with the assistance, where appropriate, of the international community – instead of the other way around. This will involve developing the ministries of justice and other players in the legal community, including judges, the bar, and academics, into partners for the reform process. Indigenizing the process of legal reform also calls into question the practice of using judges seconded from other countries to assist in adjudication, as is done at the State Constitutional Court and the new State Court, both of which are described in more detail infra.

Accordingly, the team recommends that donor organizations do more to build the local capacity of Bosnian institutions in order to indigenize the process of reform. For the USG, this may mean shifting some funding priorities. While current funding to support international experts working in OHR and other institutions may have been valuable, the transfer of responsibility from the international community to the Bosnian legal community looms on the horizon: the Independent Judicial Commission's (IJC) mandate is scheduled to expire at the end of 2003, and OHR's mandate is scheduled to end in 2005. Even if these mandates are extended, now is the time to begin preparing the Bosnians to assume full responsibility for leading the reform process. As discussed in detail *infra*, greater emphasis needs to be placed on supporting the emerging Bosnian institutions, such as the High Judicial and Prosecutor Council (HJPC) and the State Ministry of Justice, which are charged with some important and daunting duties, than on supporting some of the international institutions that currently enjoy significant USG support.

### *Strategic Planning and Donor Coordination*

Lack of donor coordination is a frequently heard complaint, which is unsurprising given the size of the donor community in BiH. This problem occurs even in countries with smaller international communities. One factor contributing to poor coordination in BiH appears to be the lack of a long-term strategic vision for the justice sector. There is no single vision of what the legal system of BiH will look like in five or ten years, so far as the team could determine. This is due in part to the fact that BiH is itself a splintered country. Ideally, the host country should provide the strategic vision for ROL objectives and coordinate the international assistance accordingly. In BiH, no government agency is even close to playing that role, although the new State MOJ is apparently (according to legislation) going to start doing so. Instead, OHR is charged with creating the vision and coordinating donor activities. Indeed, it has worked with the government to develop an overall approach for its priorities in BiH ("Jobs and Justice: Our Agenda"), but the justice section of its plan seems alternatively overly broad and overly vague; a full picture of the future of

the legal system and a roadmap on how to get there is missing. In addition, OHR's own priorities are given to frequent shifts – as one person said, the longest it can plan out is four months. Changes in personnel at OHR, due to the fact that people are usually seconded from other governments for limited tenures, contributes to the changing priorities. Moreover, coordination is a challenge. OHR's Rule of Law Task force meetings consist mainly of organizations reporting on what they are doing rather than engaging in strategic planning. Moreover, few Bosnians are invited to or attend these meetings. Finally, some members of the donor community resent OHR's efforts at coordination, and feel that they can be more effective without its guidance/interference. One OHR representative admitted that the organization can be a bit "patronizing."

OHR should begin to address this problem by convening a working group, in partnership with the three MOJs and other local representatives, that would be charged with developing a long term strategic vision for ROL reform in BiH. This Bosnian working group should become more involved (perhaps co-chairing with OHR the donor meetings) in the process of coordinating donor assistance. Such a working group should, of course, also include representatives of the judiciary, the bar, civil society, and academia.<sup>2</sup>

### *Implementation*

Some of the recent changes to the legal system, in particular the introduction of a criminal procedure code that borrows several elements from Anglo-Saxon traditions, will require the Bosnian legal community to undertake some seismic shifts. Although the donor community is supporting much training to help implement these changes, such training will not be sufficient to see that the reforms succeed (similar reforms introduced in other countries have taken years to implement). The donor community needs to recognize the difficulties that lie ahead and do more to assist in the implementation of these new codes, by embedding local and foreign experts within the offices of the judges, prosecutors, and lawyers who will be asked to implement them. As already noted above, this requires using technical assistance to build both the human and institutional capacities of local officials. Implementation also requires informing the public of their new rights (or reassuring them that rights provided under old laws have not been taken away), and so public education campaigns also need to be included in efforts to improve the implementation and use of the new legal framework.

### *Resource Targeting*

The review of donor supported programs revealed perhaps an over-emphasis on law enforcement matters. This is of course a vital component of the rule of law, in particular in BiH where the collapse of Yugoslavia and the civil war provided fertile

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<sup>2</sup> Coordination is also a problem within the USG itself, as there does not always seem to be consensus among USAID, USDOJ, and U.S. State Department concerning the allocation of resources. USAID (including both the Democracy Office and ERO), DOJ, and State all need to convene on a regular basis to not merely coordinate their activities, but to agree on priorities and to develop strategic plans for the implementation of USG activities. By setting a better example in this regard, and speaking with a unified voice, the USG can help to improve overall donor coordination throughout BiH.

ground for organized crime and corruption, and where a strong emphasis on security is necessary to undo ethnic cleansing and enable citizens to peacefully enjoy the use of their property. Nevertheless, the team felt that a greater effort now needs to be placed on the pressure points where citizens are more likely to encounter the justice system, such as in the administrative law area, in particular at the municipal level. An increased emphasis on commercial law, to help foster the economic development that the country so desperately needs, which will be addressed at least in part by a program to be designed and implemented by USAID's Economic Restructuring Office (ERO), is also to be welcomed. Even in the area of criminal law, the team observed an important gap, in the representation of indigent defendants. Bar development and access to justice are two related issues that have been under emphasized.

Another concern is in the geographic area of focus. Almost all of the donor community's programs in the justice sector are based in Sarajevo and focused on the Federation. Only one of the USG programs that were reviewed maintains an office in Banja Luka. Although there is a common perception that the RS is less open to reform, for that very reason it should be a greater target of donor projects, and the team would encourage the donor community in general and the USG in particular to place more of an emphasis there (by, for example, extending the IRIS administrative law program to include the RS) and perhaps establishing a long-term rule of law office of some kind in Banja Luka.

The following summarizes the team's findings in each of the core areas of legal reform, and makes recommendations that will help to address some of the problems described above. In the Executive Summary, the recommendations provided in this report are prioritized.

## **II. LEGISLATIVE DEVELOPMENT AND IMPLEMENTATION**

### **A. Harmonizing and Streamlining**

As already noted, the body of law that makes up the legislative framework in BiH is complicated by the fact that so many different bodies may pass or impose legislation. These are:

- The National (BiH) Assembly;
- The RS Assembly;
- The Federation Assembly;
- The 10 Cantonal assemblies;
- Municipal assemblies;
- The Brcko District Assembly; and
- OHR.

In addition, each agency throughout the government structure may issue potentially contradictory and burdensome regulations. A further complication is that many laws dating back to the Yugoslav era or that were passed during the war remain in place. The result is a confusing patchwork of law across a relatively small region that is difficult for judges, prosecutors, lawyers, and end-users (such as businesspeople) to know, to apply, and to follow.

In order to ensure equal protection of the law in all parts of BiH, necessary to attract foreign investment, facilitate domestic business transactions, and to uniformly protect human rights, harmonizing and streamlining the laws and practices in the two entities and at the State level should be an essential priority both for Bosnians and the international community.

Despite the importance of this task, only one organization is actively working towards this goal, and with limited resources. This is the Legal Reform Unit at OHR, headed by Zoran Pajic. This unit, however, employs only four Bosnian lawyers and two or three international attorneys. It is unrealistic to expect this small unit, even assisted by various working groups, to review all Bosnian legislation at the three different levels and to propose revisions that would provide greater harmonization. Also of concern is that, although led by a Bosnian lawyer, this is essentially an OHR initiative. As already emphasized, one of the challenges facing the international community in BiH is the need to indigenize the process of rule-making and to enable the Bosnians to take the lead in forming their own future. Right now, much legislation in BiH, whether developed at OHR or elsewhere, is drafted by internationals with the assistance of Bosnians instead of the other way around. Moreover, many important laws are subsequently not adopted by the entity or State assemblies, but are imposed by OHR.<sup>3</sup>

An effort at streamlining regulations affecting businesses, “the Bulldozer Initiative,” was also driven by the international community. OHR, together with the World Bank, the IMF, USAID, and other international donors, sought to identify 50 regulations that unnecessarily impede businesses in BiH. Bosnian businesspeople were asked to submit “nominations” for the regulations that were to be identified as the most unduly burdensome. Once the 50 regulations were identified, the governments were asked to rescind them. The governments reacted with some surprise at what they saw as an ultimatum, and expressed regret that they had not been invited to participate in the process earlier. It was unclear at the time of the team’s visit how this would play out, but if the government fails to act, OHR will rescind the offending regulations on its own. While the goal was praiseworthy, and the process did involve at least the Bosnian business community, it might have been more successful had there been a government “partner” involved from the beginning.

The challenge, of course, is finding the right partner or partners for working on streamlining and harmonization. One potential partner is the newly created State MOJ. It is charged by law (Art. 13, Law on Ministries and Other Bodies of Administration of BiH, January 2003) with harmonizing laws and practices in the two entities, but has an untested leadership and very few resources. Nevertheless, the donor organizations should start now building the capacity of the State MOJ to

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<sup>3</sup>Of particular relevance to this review, OHR imposed new criminal and criminal procedure codes at the state level in early February 2003 (it is hoped that the entities will adopt mirror images of that law in the near term, or such will be imposed by OHR). Amendments to the entity/cantonal laws on courts ensuring the merger of first instance courts were imposed in November 2002. Laws on Prosecutors offices were imposed in August 2002. The new laws establishing the three HJPCs were imposed in May 2002. In addition, new civil and civil procedure codes, as well as a law on enforcement of judgments, are completed and expected to be passed or imposed at all levels soon. Finally, a working group is reviewing the law on administrative disputes in the Federation, and a new draft may emerge some time this year.

eventually draft and propose harmonized legislation for the State and the entities.<sup>4</sup> Alternatively, an NGO or quasi-NGO could be supported that would begin to take on this role. The point is that a local institution, outside of OHR, needs to start taking the lead in the vital task of harmonizing the country's legislative framework.

Another factor that contributes to the legislative hodgepodge is that there are too many international organizations involved in drafting, including OHR, IJC, USAID (through CEELI and IRIS),<sup>5</sup> the World Bank, and GTZ, among others.<sup>6</sup> Some problems with donor coordination in the area of legislative drafting were reported. For example, there were conflicts between the law on obligations that GTZ helped write and a European Union (EU) supported law on consumer protection. There are also conflicts between the GTZ supported law on obligations and a World Bank law on leasing. The donor community, again working perhaps with the new State MOJ, should develop some kind of clearinghouse to assist the Bosnians to coordinate legislative drafting efforts.

Another step that would help to sort out the current legislative morass would be the creation of a complete, nationwide legislative database. BiH may be the only country in the region that lacks such a complete database (in most other countries these have been developed by for-profit companies). GTZ is working on creating one, but it is limited to the Federation. A full, searchable set of laws placed on a database would facilitate the process of harmonization, and would help information dissemination (and hence improve implementation) throughout the country.

The challenges to streamlining and harmonizing the legislative framework in the fragmented nation of BiH cannot be overstated. On the positive side, however, BiH clearly sees itself moving towards European integration. It has already, for example, joined the Council of Europe (COE), which requires the adoption of a variety of uniform conventions, the most important of which may be the European

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<sup>4</sup> The new State Minister of Justice in his meeting with the team recognized that one of his primary functions is to harmonize legislation, but he does not have a department that would do that. Another supposed function is to coordinate international legal assistance, so at least in theory the State MOJ is an appropriate partner for donor coordination, and the Minister suggested conducting a roundtable or conference of some kind with the international community.

<sup>5</sup> IJC and CEELI have worked on the civil procedure code, the law on enforcement of judgments, and the law on the bar, and IRIS is working on revisions to the law on administrative disputes.

<sup>6</sup> GTZ helped to draft two important laws, one on land registry, imposed last year, and the law on notaries, adopted in the Federation but not yet in the RS, where it is opposed by lawyers. The system of notaries will be new to Bosnia, but will be very important because it affects land ownership. The notary is an impartial legal advisor for two parties and at their request drafts a contract for them. Five types of contracts must be "notarized" or will be found null and void: real estate contracts, those that establish business companies, contracts between spouses, and those which dispose of important property of juveniles or those lacking legal capacity. For real estate contracts, the notary will also check to make sure that the title is clear, and register the transaction at land registry offices in certain courts. GTZ is conducting training for prospective notaries this summer, will help administer an examination this autumn, assist to establish a chamber of notaries, and then they will start work in March 2004. GTZ will also support a public education campaign. The MOJ will license the notaries and will decide on the number and location of offices (usually about one notary per 20,000 people). GTZ is also helping to equip the land registry offices and train the clerks. GTZ also drafted a land registration law, but it met with "huge resistance" and was imposed by OHR. Generally, the land registration books are reliable, according to GTZ, but the title is not so clear for "socially owned" property, so newly privatized companies cannot take advantage of that land to mortgage it to raise funds. Finally, GTZ is working on a draft law on property usage, including mortgaging.

Convention on Human Rights (ECHR).<sup>7</sup> Moreover, BiH, together with its neighbors Serbia and Montenegro and Croatia, is looking in the long term towards eventual membership in the EU. This means that there is something of a roadmap for BiH and the region to follow. This in turn would indicate that the European countries, in particular because BiH is historically a civil law country, should take the lead in helping to develop legislation, whereas the USG should probably focus on the less glamorous but equally important task of ensuring that the laws are properly implemented.

## B. Drafting Capacity and Transparency

Another concern is the manner in which legislation is drafted and adopted. First, none of the MOJs at the various levels of government have a strong capacity to draft legislation, but rather largely rely on relatively informal working groups. In many parliamentary systems, the MOJ is charged with both drafting key legislation and reviewing proposed laws drafted by other ministries to ensure that they do not conflict with other legislation and that they do comply with the constitution, tasks which the MOJs in BiH do not seem well equipped to perform.<sup>8</sup> Also, the parliaments do not have capable secretariats or legislative councils charged with drafting or reviewing drafts. In short, there is little capacity within the local government or political structures to undertake legislative drafting. On the other hand, there is some local capacity housed within OHR, which has drafted much legislation, and within the international donor community, whose local lawyers have worked side by side with international lawyers to help draft legislation. In other words, BiH is in a better position than some other countries in transition that have not enjoyed such in-depth legislative drafting assistance, but the capacity that has arisen within BiH as a result is not located within any host country government structures. As already noted, that needs to change. The donor community needs to take advantage of the human capacity development that has occurred, and transfer that to a local institutional capacity. Technical assistance focused towards local legislative drafting organizations, or the creation of a local think-tank that works on legislative development, can help to achieve that goal.

A second concern, which applies regardless of whether the law is being drafted at OHR or within government structures, is that there is little transparency or public participation in the process. Although OHR and some other international organizations have organized occasional open hearings on proposed legislation, that has been the exception rather than the rule, and they have not been organized by the

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<sup>7</sup> COE reviews legislation for compatibility with COE requirements (there were 91 conditions that BiH had to fulfill) and is trying to build the capacity of the Bosnians to do this themselves. The partner for that was Ministry of European Integration but that is being shut down and the new partner will either be the Ministry of Human Rights and Refugees or the new State MOJ.

<sup>8</sup> The Federation MOJ has three departments (Judicial, Execution of Penal Sanctions, and Administrative Issues). Even though one of its tasks is legislative drafting, it does not have a department for that, relying instead on the working groups. The RS MOJ reported that it used to have a department for preparing legal and normative acts, but it no longer exists (its main departments are Judicial, Minor Offenses, and Execution of Penal Sanctions). It is interested in drafting legislation and working on harmonization with the Federation, but it is not sure if it can re-create a drafting department because of budgetary constraints.

government or the legislature.<sup>9</sup> In addition, the professional community, in particular the bar, feels that it has little input into the development of legislation, and that OHR in particular does not pay attention to its views.<sup>10</sup> (The bar in the RS was an exception, where it reported that it has a “good lobby” because several lawyers belong to the RS Assembly). Although individual lawyers may be consulted on specific laws, the full profession is not included in the process. Similarly, although individual law professors may be brought in to help draft or comment on legislation, the law faculty, unlike in other civil law countries, is not consulted on any systematic basis. The international community has an opportunity to set an example for the future means of drafting legislation in BiH by conducting open hearings and actively soliciting the views of the bar, the judges, the business community, and of relevant NGOs. This will improve the sense of local ownership in the law, which should, at least in theory, lead to improved implementation. The organizations, such as the Federation Bar, which complain of a lack of a voice also need to do a better job (and international donors can help them) of organizing themselves to participate in the legislative process and lobbying for their positions.

The lack of local ownership is particularly problematic regarding laws that are imposed by OHR. It is too easy for Bosnian politicians to cede decision-making to OHR because they can then avoid the compromises and deal-making essential to democratic legislative development but which might also alienate them from their political bases. OHR, on the other hand, is up against a ticking clock and needs to move quickly to impose the legislation it sees as fundamental to the development of democracy and a free market economy. Perhaps OHR needs to expend more energy on forcing the political compromises in order to increase ownership and ensure the functioning of democratic legislative processes rather than on drafting and imposing what may be technically ideal legislation, but legislation that suffers from a lack of local ownership. The legislative drafting groups pulled together by OHR may want to bring governmental players into the process at an earlier stage to help develop the local ownership and to improve chances for adoption of the draft law at the parliamentary level rather than imposition by OHR. Finally, reaching out directly to the citizens through public hearings and other mechanisms might also have a salutary political effect. As it is, there is a sense that OHR drafts legislation with its experts, and then presents it to the parliaments as a *fait accompli*. That just makes it easier for the politicians to shirk their responsibilities and the citizens to ignore the law that neither they nor their representatives played a role in creating.<sup>11</sup>

### C. Implementation

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<sup>9</sup> CEELI organized some hearings on the civil procedure code, and OHR sent the criminal procedure code for commentaries to 25 international and 20 national organizations.

<sup>10</sup> Lawyers in Sarajevo and Zenica were particularly vocal about their lack of participation in the reform process, complaining that they are not consulted regularly and when they are, their advice is not heeded, citing the law on the bar and the law on land registration as examples. One lawyer argued that foreign firms should not draft legislation for BiH because they cannot understand the entire system, and that even if they are trying to follow EU models they need to do more to involve more local lawyers. He also noted that sometimes changes are made on the advice of one lawyer, who cannot be said to speak for the entire (or a majority) membership of the bar.

<sup>11</sup> As discussed in other parts of this report, this alienation extends beyond the legislative agenda, to the overall agenda for legal reform, such as the restructuring of the judiciary and training needs, etc.



One of the lessons learned over the past decade or so from ROL reform initiatives throughout the region is that it is relatively easy to draft good legislation, but the real challenge is in implementing it. It is especially challenging in BiH, where many laws are imposed, to understand what additional funding, additional regulations, additional training, etc., will be required before a law can be truly implemented. Neither OHR nor the government authorities do a good enough job of analyzing information and using statistics as they develop legislation or analyzing the budgetary and resource consequences of the laws that they do draft and adopt. It may be useful for the donor organizations to conduct a Regulatory Impact Assessment (RIA) that would help the government to use information and statistics better in the development of laws and regulations, and then to better prepare itself for how to implement the law.<sup>12</sup>

Also relating to implementation, laws are sometimes imposed in BiH without sufficient preparation for those who will be asked to implement them. The new criminal and criminal procedure codes, which will bring enormous changes to the way the police, prosecutors, judges, and lawyers work, are two recent examples. Those laws will in many ways convert BiH's criminal justice system from a continental system to a hybrid between the continental and common law systems. For example, and perhaps most importantly, the position of investigating judge will be done away with, and prosecutors will have more autonomy over investigating crimes. This is an enormous shift, and one which other countries would not undertake without years of intensive training and preparation. In BiH, it is being done in a matter of months. The donor organizations need to do more (through increased training, providing technical assistance, and supplying material support) if this initiative, about which many judges and lawyers are highly uneasy, is going to succeed.<sup>13</sup>

In addition, and as already noted, enhanced implementation also requires addressing public education, an aspect which seems to have been overlooked in many regards by the donor community in BiH. In order for the citizens to use protections guaranteed to them under the new framework, they need to know that they exist, and significant changes in the law need to be accompanied by public education campaigns.

#### D. Recommendations

##### *1.a. Strengthen the State MOJ: Build Local Capacity to Draft and Harmonize Legislation*

Goal: Reverse the current process of legislative drafting so that Bosnians are making and passing their own laws with the assistance, where appropriate, of the international community, instead of the other way around. A secondary goal would be to assist the local partner (e.g., the State MOJ) to take a leading role in coordinating legislative

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<sup>12</sup> The British Department for International Development (DFID) reported that it is just beginning a project to strengthen policy planning and budgeting in the justice sector. As a first step it is helping the MOJs and MOIs at the entity level to rationalize the allocation of their budgets.

<sup>13</sup> One potential partner for this effort is the Criminal Code Implementation Team, organized by OHR. It includes 15 local lawyers (nominated by the State MOJ) and two outside organizations, the Organization for Security and Cooperation in Europe (OSCE) and the COE, and is hopeful of obtaining some modest funding from the State budget. It will monitor implementation and get feedback to see how the new code is working and suggest amendments and training.

drafting assistance, by establishing a clearinghouse to keep track of which organizations are working on which laws, determining which drafts may address similar issues, and ensuring that those issues are addressed in a uniform fashion. This process should also be geared to result in greater harmonization of the legislative framework at the state and entity levels. The ultimate goal is for more laws, developed with full local participation and ownership, to be enacted by the assemblies rather than imposed by OHR.

Local Partners: A State governmental body, such as the State MOJ, or a local NGO or think-tank dedicated to legislative development. The State MOJ would clearly need extensive assistance in building its capacity to do this work, but providing that assistance would also build the credibility and sustainability of this new State-level organization.

Donor Role: This will take a concerted effort on the part of the entire donor community, and OHR must take the lead. As a part of this process, OHR and other leaders in the international community should expend more capital in working with the local political leadership and citizens themselves to engage with OHR in the rule-making process and to reach compromises among themselves that are acceptable to OHR. OHR should seek to include governmental representatives on working groups that draft legislation. The USG can help the targeted local partner (e.g., the MOJ) by providing material support and extensive technical assistance to help it put into place processes for reviewing, harmonizing, and drafting legislation. This project could and should be implemented in conjunction with the following recommendation relating to legislative transparency.

Timeframe: 2003-2008

#### *1.b. Improve Transparency of Legislative Processes*

Goal: Improve the transparency of and level of public participation in legislative processes, as practiced both by OHR and government bodies, in particular the State MOJ if Recommendation 1.a., above, is implemented. In order to accomplish this goal, OHR and the other lawmaking bodies should conduct open hearings on draft legislation, include more local Bosnian institutions (such as the bars and the law schools) in the drafting process, and encourage professional groups and NGOs to speak out publicly on draft legislation.

Local Partners: State and entity assemblies, the State and entity level MOJs, NGOs, professional (bar and judicial) organizations, law schools.

Donor Role: Again, OHR must take the lead on this and set an example for the local legislative bodies and the State MOJ to follow in terms of transparency and inclusiveness. Existing USG programs can help to build linkages between OHR and the bar associations, judicial associations, law faculties, NGOs, and other groups interested in legislative development so that those groups are consulted as a matter of course, and on an institutional level, rather than on the current ad hoc basis. At the same time, current USG grantees and contractors working with these groups should help them to build their capacity to engage in legislative advocacy. In addition, OHR and governmental legislative drafting groups should pay more attention to the political process of law making, by involving representatives or assembly staff members on the drafting groups, in an effort to improve the likelihood that the laws will be passed rather than imposed.

Timeframe: 2003-2008

## *2. Technical Assistance and Training to Legal Professionals: Improve Implementation of New Legislation*

Goal: As in many countries in transition, perhaps too much attention is paid to drafting legislation rather than implementing it. Considering the enormous shifts in BiH's evolving legislative framework, in particular relating to the procedural codes, the donor community should emphasize implementation of these new codes, which will require greater training efforts and more institution building, as well as targeted public education campaigns.

Local Partners: Judges, prosecutors, members of the bar.

Donor Role: The USG should take the lead in assisting key institutions to implement the new codes. In terms of training, the new Judicial and Prosecutorial Training Centers (JPTCs) will conduct future training of judges and prosecutors, but a lacuna now exists, pending the creation of those centers. In the meantime, various USG programs (and others in the donor community) are picking up the slack. That work should continue. One gap is that there is no training institution for lawyers, and an effort should be made either to enable lawyers to attend some of the future institutional trainings or for the bars to create their own training institution. While more training needs to be done (the training that has taken place for the bar, for example, has only scratched the surface of the needs), training alone will not be sufficient. Ensuring implementation will also require embedding experts within key institutions to act as a resource, developing and disseminating manuals, and teaching future judges, prosecutors, and private lawyers – in other words and ensuring that law school professors have and use in their courses the commentaries that are developed for judges, prosecutors, and lawyers. Some train the trainers sessions for law professors would also be appropriate. In addition, observers can monitor important cases to see how the new codes are being used in practice, and to recommend changes to training courses or the laws themselves, as required. Most importantly, a holistic approach needs to be taken. Some substantial plans are in place to provide technical assistance to judges and prosecutors, particularly on new criminal codes, but experts also need to be placed with the lawyers, as a resource and a point of ongoing training with the bars. Finally, a certain amount of targeted public education may also be necessary so that the public knows how to use the new legislation and so it does not feel threatened by an apparent loss of existing rights and procedures. All of this could be started immediately by contractors and grantees that are already in place. It should be noted that, given BiH's goal of further European integration, as well as the fact that BiH's legal traditions are firmly based in continental law, it is logical for the USG to cede the area of substantive legislative drafting to European organizations and to focus instead on implementation.

Timeframe: 2003-2007

## *3. Complete the Preparation of a Full Local Legal Database*

Goal: To establish a fully searchable legal database that would include all legislation applicable in BiH, as well as court decisions from the constitutional and supreme courts, and important governmental regulations. Such a database would not only

improve access to the law for judges, prosecutors, and lawyers, it would also facilitate the process of streamlining and harmonizing the legislative framework.

Partner: The State MOJ.

Donor Role: GTZ, the German donor program, has already taken some important steps in this regard, but its work has been limited to the Federation. Other donor organizations can help to extend this effort to cover all laws and important court decisions in the country.

Timeframe: 2004-06

#### 4. *Conduct a Regulatory Impact Assessment*

Goal: Conduct a Regulatory Impact Assessment (RIA). Although a full review of the process of legislative drafting was beyond the scope and capacity of the team's work, it became clear that there is a gap, both at OHR and at the government levels, between the anticipated results of new legislation and the reality of how new legislation can be implemented. The RIA would review how the government and OHR collect and use information and statistics in the development of legislation, and how they allocate funding and resources when legislation is implemented.

Partners: The assemblies and MOJs.

Donor Role: Again, this is a project that would require full OHR participation and backing. The World Bank has experience in conducting RIAs, and would be a natural organization to conduct one in BiH. The British Department for International Development (DFID) is currently working with the MOJs and Ministry of Interior on funding in the justice sector, and should be involved as well.

Timeframe: 2003-2005

### **III. JUDICIAL/COURT REFORM**

Judicial reform is typically at the heart of legal reform programs for countries in transition. As in most such countries, the judges in BiH have faced a broad array of problems, including insufficient salaries, allegations of corruption and the concomitant lack of public trust, increasing case loads, poor training, insufficient access to information, inadequate budgets, and poor work conditions. Unlike in other countries in transition, however, OHR exists in BiH, and has mandated some dramatic changes. First, it imposed a law raising judicial salaries in the Federation (the RS passed its own law), making judges among the most highly paid officials in the country.<sup>14</sup> Second, it imposed new laws establishing the three HJPCs, which changed the way judges and prosecutors are appointed and to a certain degree will change the way the courts and prosecutors' offices are managed. Previously, judges were appointed through a process managed by the MOJs and with the approval of Parliaments. Now, most judges (and all prosecutors) are being appointed by new bodies, the HJPCs (described in more detail *infra*), that will also take over from the various MOJs some functions of court management. During the transitional period, the work of the HJPCs is being assisted by the IJC, an independent body funded by the US and the EC through OHR that has been charged with overseeing the process of judicial reform since March 2001. The team's visit came at a time of great transition

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<sup>14</sup> Judges' salaries now range from 1,500 to 4,000 km per month, based on seniority and other factors laid out in the law on courts.

in the judiciary, as the HJPC was in the middle of reviewing the background and credentials of all those who have applied to be judges and prosecutors in the new system. In addition, the IJC has made recommendations to the High Representative on the restructuring of the court system as well as recommendations to the HJPC on the number of judges in each court in the new and downsized structure. These recommendations will result in a number of courts being closed down and a number of judicial slots being eliminated. It is hoped that the increased salaries, the reappointment and restructuring processes, and the creation of new training centers will result in the creation of a more honest, capable, and efficient judiciary in BiH. It is too early to reach any determination as to whether those hopes will be fulfilled, but it is clear that even with these changes the judiciary in BiH will still face an array of problems that donor organizations can do much to help overcome.

#### A. Organization

##### *State Level Courts*

As noted above, the DPA mandated the creation of only one national court, the State constitutional court (State CC). The DPA also created another quasi-judicial body with national jurisdiction, the Human Rights Chamber (HRC). Finally, recent legislation imposed by OHR created a second national court, the State Court.

The State CC has appellate jurisdiction over any court in BiH, but the matter must relate to the BiH Constitution or to human rights. The court cannot review issues on its own initiative, but can only hear matters that are referred to it from another court, or by members of the presidency or the prime ministers or a number of legislators. Reportedly, approximately 90% of State CC cases relate to the processes under which property claims are decided (with jurisdiction based on art. 6 of the ECHR.) There are nine judges on the court, including three internationals appointed by the president of the European Court for Human Rights in Strasbourg, two Bosniaks and two Croats appointed by the Federation Assembly, and two Serbs appointed by the RS Assembly. In addition, five legal advisors work for the court. The first CC had a mandate that lasted only five years (1997 – 2002), but the newly appointed judges will now hold office until they reach retirement age (70). The mandate for the last court expired in May, and the first meeting of the new court should have been in September, but three days before that meeting OHR rescinded the appointment of the Serb judges. The newly configured State CC has not yet met (it has been 10 months since it last did), pending appointment of new Serb representatives. There is currently a backlog of about 400 cases, and about 40 new cases are being filed each month. The State CC decisions are published in the Official Gazettes of the State and the two entities. Although the team asked, the State CC representative was unable to tell us the extent to which its decisions are complied with.

The HRC has final authority to determine issues relating to alleged violations of the ECHR. It can take jurisdiction only after all domestic remedies have been exhausted. It includes nine international and six national judges (four from the Federation and two from the RS). There are also 20 lawyers on staff, who review applications and prepare memoranda for the judges.

The HRC is at an important juncture because its mandate expires at the end of 2003, at which time its caseload is expected to be transferred to the State CC. New cases, to the extent necessary, would be filed with the European Court for Human Rights in Strasbourg, accessible to BiH citizens since BiH acceded to the COE in 2002. The problem is that there are some 10,000 cases now pending before the HRC, with an additional 150 cases being filed each month. Many of the older cases (about 3,000) relate to the failure to get property back, but the team was told that those filings have dropped off and that domestic authorities now seem to be handling these cases appropriately. Despite this large caseload, most observers believe that broad categories of cases are likely to be resolved soon by OHR decisions, or that some cases are old or redundant and have been resolved in other forums. In August 2002, the European Commission (EC) said that the HRC and the State CC should “merge” quickly, and the Organization for Security and Cooperation in Europe (OSCE) and the COE, noting the expense of the large international component of the HRC, also support a merger, which under the current plan, would occur on January 1, 2004. The State CC, on the other hand, expressed concerns regarding its ability to absorb the caseload and the staff of the HRC.

The State Court is being organized according to a May 2000 law that was imposed by OHR. It has jurisdiction over state-level legal actions as well as disputes between the entities. Some people interviewed expressed concern at the breadth of the State Court’s mandate. Since it is the only court with state-level jurisdiction, except the BiH Constitutional Court, the State Court will serve as a court of first instance in some cases. The Court will eventually include 15 local judges, with eight in a first instance court and seven serving in an appellate division, with equal numbers of Bosniaks, Croats, and Serbs. There will also be six international judges, all secondees. The criminal panel will have jurisdiction over serious organized crime and corruption cases (those which may impact the financial stability of BiH), drug cases, and trafficking in humans. In addition, there will be a separate panel for war crimes, scheduled to be created in 2004. The administrative panel will have jurisdiction over election and VAT cases.

The State Court is just now beginning its work, and it has received some important support already from the donor community, including the reconstruction of office space with U.S. State Department funding, and training, furniture and equipment provided by Spain. An Information Technology (IT) person will also be coming from Strasbourg to work with the State Court. The State Court faces many uncertainties, including funding from the State budget, and enforcement of decisions, which will be done by the entities, although the court has its own detention center, and depending on an agreement between the entities may get its own prison as well. A general concern was expressed by some people interviewed that the structure of the State Court currently being supported by the international community will ultimately be too large, expensive, and unwieldy for the Bosnian state budget to sustain.

As already noted, additional support will come through the foreign judges who are being seconded to work on the State Court. This raises some concerns. It is unclear to the team what the standards are for appointment and, if necessary, removal of the foreign judges. Moreover, secondments typically last for one year, which will be a very brief period for these foreign judges to acclimate themselves to a new and complex legal system. (There is apparently no plan in place to train the foreign judges

on Bosnian legislation). The team would urge the HJPC to adopt and publish minimal standards for the appointment of foreign judges, provide some intensive training and ask that such judges be seconded for more than one year.

### *Federation Courts*

The Federation has five levels of courts: a constitutional court (the Fed. CC), a supreme court (the Fed. SC), 10 cantonal courts, municipal courts, and minor offense courts.

The Fed. CC, for its first mandate (1996 – 2001), originally consisted of six national and three international judges. The current court will be made up of all national judges, with three Bosniaks, three Croats, two Serbs, and one Montenegrin, who will serve until retirement age (70). The members of the court are nominated by the HJPC, and appointed by the Assembly. The court did not operate for 15 months because the Assembly did not convene and so new judges were not appointed. Last year, the Fed. CC had about 65 cases, of which it decided about 45. The size of its caseload and the rate of issuing decisions has been fairly consistent since the court's establishment. The caseload is low (in stark contrast to most of the other judicial bodies in the country) because the Fed. CC hears only matters submitted by authorized parties, which is limited to the president, the vice president, the prime minister, the deputy prime minister, 1/3 of either house of parliament, the president or prime minister of a canton, or 1/3 of the cantonal parliament. Ordinary citizens cannot make submissions to the Fed. CC. The Fed CC is funded through a line item in the entity budget and, again in contrast to many other judicial bodies, seems reasonably well supported, with its own computers, information link, a webpage in the works, and court recording equipment. Fed. CC decisions are published in the Official Gazette. Enforcement of decisions is reported to be uneven.

New judges for the Fed. SC have been recently selected. The new court will meet for the first time on April 1. The court has 22 members: 11 criminal judges, 5 civil, and 5 administrative, plus the president. The main problem facing the Fed. SC is its caseload: there are about 600 criminal, 970 civil, and 10,500 administrative cases pending resolution.<sup>15</sup> Obviously, the main blockage is with administrative disputes, most of which concern tax and customs cases, many of which will start to be filed with the State Court when the new VAT is introduced. But the real problem lies with the current law on administrative disputes, under which the Fed. SC acts as the court of first instance for many administrative disputes. Revisions to the law on administrative disputes currently under consideration would send most administrative cases for an initial decision to the lower courts, and the Fed. SC would act as a court of cassation. (Under the new criminal procedure code, it may act as both an appellate and a cassation court, and under the proposed new civil procedure code it will also be

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<sup>15</sup>In 2002, 78 % of court cases in the Fed. SC came from the administrative area, with less than 12 % criminal. More importantly, the vast bulk (85.5 %) of administrative cases remained undecided after one year. One court president called administrative law “a catastrophe.” In the Mostar cantonal court, for example, administrative caseloads number in the several hundreds, as opposed to 100 -150 criminal or appellate cases. Enforcement of these decisions is slow as temporary occupants resist eviction and local authorities fail to act. Many property cases find their way to the local ombudsman, who then follows up with local authorities to obtain enforcement. The ombudsman in Mostar reported receiving over 3,000 cases last year, mostly in property, and over 300 since January 1 of this year.

just a cassation court). Currently, the Fed. SC has first instance jurisdiction for inter-cantonal crime, drug trafficking, and organized crime, but it heard only about 22 such cases last year. The Fed. SC has a separate line item in the budget, but cannot re-allocate funds within its budget without government approval. The Fed. SC annually publishes significant decisions in its bulletin, but they were not published last year because the editorial board was not elected. The President of the Fed. SC is also responsible for managing the judicial police, of which there are 350 in the entity. The judicial police provide security for the courthouses, and bring prisoners and defendants to court, and execute orders of judges. Execution of judgments is done by an executive clerk, who can be helped by the judicial police.

The Federation lower courts consist of 10 cantonal courts, with mixed first and second instance jurisdiction and 53 municipal courts. Under the court restructuring program, the 10 cantonal courts will remain in place, but the municipal courts will be cut to 28, with an additional four branches, so there will be a total of 32 such courthouses. The caseloads of these courts (and the lower RS courts) are set forth in the August 15 report by the IJC, "Restructuring the Court System: Report and Proposal."

Minor Offense Courts hear traffic violations and some customs and tax cases (jurisdiction is set forth in various substantive laws, and needs to be consolidated). There are 65 such courts in the Federation, with approximately 225 judges.

#### *RS Courts*

As in the Federation, there are five levels of courts within the RS: the RS constitutional court (RS CC), the RS Supreme Court (RS SC), district courts, basic courts, and minor offense courts.

The team could not meet with the RS CC because it had not been constituted and there was no one available to meet with. It differs from the Fed. CC in that it can hear cases submitted directly by citizens, but otherwise its jurisdiction is similar.

The RS SC consists of 15 judges plus the president, divided into three departments (criminal, civil, and administrative), each with five judges. Thirteen judges were appointed following the reselection and took up their posts in early April. Due to a lack of qualified Bosniak candidates, the three unfilled posts have been readvertised. There are usually three judges on each panel, but there can be five if some extraordinary legal remedy is being sought. Including all the judges, the RS SC has a total of 32 employees. It is working out of temporary space leased from the district court, but has submitted a request to the RS MOJ for more space. It has a separate line item in the budget, but the request is handled through the RS MOJ, which then passes it on to the RS Ministry of Finance. As in the Federation, the primary caseload relates to the administrative section. The criminal section receives only about 20 cases per month, which it resolves on a timely basis. There is some backlog in the civil section (about 250 cases, some of which date back to 1992, which raises the question of whether anyone is pursuing these claims), but the court feels that it is holding steady there, although the case filings are increasing. The administrative section, on the other hand, receives between 20 and 50 cases *each day* and there is currently a backlog of 3,000 cases. Since the court is resolving about 80



– 100 cases each month, this backlog is on the rise. Most complaints concern property rights, pension and disability issues, and labor law, but the real problem, as in the Federation, is that a party can appeal any final administrative decision directly to the RS SC – there is no lower court that hears these cases. Another problem is that the government institutions often do not obey the court decisions and so the litigants have to return to the court for an additional order, but this does little good because apparently there is no mechanism for fining the agencies or holding them in contempt. The court can find that they have committed a felony, but that power is rarely used. The court representative with whom the team met was aware that the Federation was considering amendments to its Law on Administrative Disputes to address this problem, but was unsure what, if anything, was being done along those lines in the RS. The RS SC prints a bulletin with significant decisions once a year, which is widely distributed.

Under the IJC court restructuring plan, the 25 basic (first instance) courts in the RS will be cut down to 19, but with two branches, for a total of 21 court buildings. The current five district (second instance) courts will remain.

The jurisdiction of the minor offense courts in the RS is similar to those in the Federation. There are 28 minor offense courts in the RS, with 110 judges.

### *Judicial Associations*

Associations of judges have been established in each entity.

USAID's ABA/CEELI Rule of Law program helped to establish the Federation Association of Judges in 1995. Reportedly, 95% of the judges are members, and pay annual membership dues of 100 KM, withheld from the members' salaries. In recent years, CEELI has provided a grant to pay for the annual meeting of the association. The Association has an office in the SC building and assistant who works there. Activities have included helping to draft the law on the judiciary and on prosecutors, and conducting training programs.

CEELI also helped to establish the Association of Judges and Prosecutors of the RS (AJPRS). All judges and prosecutors are reportedly members, and pay 300 KM in annual dues. Given the new procedural code which will introduce more of an adversarial system, some thought is now being given to splitting the AJPRS into two associations, one for judges and another for prosecutors. Activities include publishing important decisions and conducting training programs.

A merger of the two entity associations has been discussed, but has been put on hold pending completion of the judicial reappointment process. It seems likely that, at best, some kind of umbrella organization will be set up that will allow the two entity organizations to maintain their autonomy and independent funding, but that would enable them to join the International Judges' Association (which will only admit one association per country). The team would urge the two organizations, for the sake of efficiency and to provide a positive example to other organizations in the two entities, to merge formally and totally, rather than pursuing a fig leaf approach designed simply to facilitate membership in international organizations.

## B. Issues

### *Budgeting and Management*

The above description of the court system reveals a judiciary that is too large and unwieldy for a country the size of BiH. The IJC's court restructuring project will certainly improve the situation. The IJC is recommending that in the Federation the current number of 434 first instance judges be reduced to 338, or a 22% cut. In the RS, it is recommending that the current 220 first instance judges be reduced to 154, or a 30% reduction. In both entities, first instance panels consist of three judges and at the appellate level of five judges, with some lay members. In the future, usually one judge at the first instance and three judges on appeal will hear cases, and the inclusion of lay members will be mostly eliminated. This should also help to increase efficiency. The reorganization will also see the creation of special commercial sections within the first instance courts in both entities (one in each canton in the Federation, five in the RS, and one in Brcko).

The reorganization of the courts is but one part of a larger process of changing the way the entire court system is managed. Right now, in the Federation the cantonal MOJs are responsible for funding the cantonal and municipal courts, and providing them with training, equipment, and supplies. In the RS, that work is done by the RS MOJ.<sup>16</sup> Soon, however, the role of budgeting and managing the courts (and prosecutors) will have to be shared with a relatively new institution, the HJPC. The current laws on the HJPCs suggest some conflict between the authorities of the MOJs and the HJPC with respect to court budgets, but the IJC indicates that such conflicts should be resolved in the near future. The HJPC is made up of 15 Bosnian and eight international members.<sup>17</sup> It has been charged with, and is pursuing, the re-

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<sup>16</sup> The MOJs have done a less than stellar job in that regard. One cantonal court, for example, with 22 judges and 54 support staff, had only seven computers. Although judges are now relatively highly paid, thanks to the OHR imposed decision, they are not always paid on a timely basis. In addition, office space, court space, and equipment and supplies provided to the courts are substandard. Although the judicial system generates a fair amount of funding through fines and fees, most of that is returned to the entity or cantonal government. In 2001, the RS misdemeanor courts alone brought in 8 million KM, but the entire justice sector received only 41 KM, to cover courts, prisons, prosecutors, and the MOJ. The RS SC reported that very little of the fees that the courts generate come back into the judiciary and it has little control over the budget. One RS court reported that the local branch of the post office would not accepting their mail because the bills were not being paid. One cantonal court reported that the court does not always get the full amount that has been allocated to it by the canton. Another cantonal court negotiated an agreement to get a certain percentage of the fees and revenues that it generated returned to it, but the agreement was never honored.

<sup>17</sup> OHR imposed legislation in May 2002 that established three HJPCs: one each for BiH, the Federation and the RS. Members of the HJPC, including eight selected from the international community, assumed their responsibilities in September 2002. The HJPC meets as one council, but when making a decision regarding an entity, only six members from that entity and two from the other entity, and all internationals vote. The State Council consists of all members, plus two from Brcko. There are currently discussions within OHR and the HJPC to merge the three bodies into one HJPC. The HJPC is vested with the authority to select judges and prosecutors and to detail matters related to disciplinary liability and responsibility consistent with the transparent criteria set forth in its implementing legislation. This authority includes the responsibility for determining the number of judges and prosecutors for each court and prosecutor's office as well as supervision of the training of those judges and prosecutors. The HJPC also has broad authority to take measures to improve court efficiencies and to assume other responsibilities related to the proper administration of the judicial system, including the removal of judges or prosecutors for disciplinary reasons. The international component is supposed to end in December 2003, but the law allows it to continue beyond, which it likely will.

appointment of judges and prosecutors throughout BiH (as of the time of the team's visit, it had largely completed the review and appointment process for the State court, and the supreme courts in the Federation and the RS, and was moving to address the lower courts). To do this work, the staff of the HJPC, supported by the IJC, reviews applications from potential judges, conducts background checks, and makes recommendations for appointment. In 2004, it will take on the tasks of preparing budgets for all courts in BiH by assisting the courts in the budgeting process, lobbying the proposed budgets with the relevant Parliaments, tracking and using statistics, overseeing training, and investigating allegations of judicial and prosecutorial impropriety. Right now, the IJC Restructuring Department is collecting the necessary data and preparing statistics to enable the permanent HJPC to fulfill its functions related to court budgeting and funding beginning in 2004. By the end of 2003 the IJC also intends to develop a database that includes the budget for each court in BiH. A uniform budget template based on the existing national systems has already been developed by IJC. After IJC closes down, the HJPC and its secretariat will need further technical assistance in how to use statistics, develop budgets, lobby for funding, develop training programs, and conduct ethics investigations. The IJC is conducting a study, scheduled to be completed in April, on the costs and long-term savings associated with all courts as a result of the restructuring process. This study may pave the way for building the capacity of the HJPC in this regard. One approach towards ensuring adequate financing for the courts would be to enact legislation that would enable the judicial systems to keep some percentage amount of the funding that they generate in fees and fines rather than returning that amount to the ministries of finance and then going through the usual budgeting process, which in the past has not resulted in sufficient funding for the judicial system.

### *Case Management and Backlog*

It is also clear from the above description that the huge number of administrative cases threaten to overwhelm the supreme courts. But the problem of caseload is not limited to the higher courts. The president of the cantonal court in Zenica reported that the increasing caseload was perhaps the most serious problem that her court was facing, but that most cases were on relatively simple matters like debt collection. As she pointed out, moreover, it is easy for defendants to delay even small cases, by not appearing for hearings or appealing decisions repeatedly. Currently, there is no mechanism for entering a default judgment, and while the courts do have some contempt powers, they are hesitant to use them. In addition, the courts themselves are not managed efficiently, with judges performing many tasks that, in other countries, court administrators would perform, such as assigning cases, reviewing filings, etc. RS judges also reported the increasing caseload as their number one problem. In one basic court, they have over 1,100 cases pending, and hear only about 380 per year. Most cases have to do with property and housing rights, and labor law.

In both the Federation and the RS, great hope for increased efficiency is being placed on the pending new civil procedure code (currently, a 20-year-old law is being used). Under the new law, there will be no obligation of the court to ex officio gather evidence – the courts will rely on evidence gathered by the parties. In addition, the cases will need to be decided within two hearings, one preparatory and one final. And the longest deadlines are 30 days. These changes are enormous, and the judges the

team interviewed expect significant problems in implementing them. As already discussed, at least in the Federation changes in the administrative law are expected to lower the number of administrative cases now clogging the Fed. SC, but that code is still being worked on by a drafting group and it is unclear when it will be completed.

Another problem related to case management is execution of judgments. Currently, it is extremely difficult to execute civil judgments because the defendant can delay hearings and easily move assets, thus contributing to the extended time in which it takes to bring a matter to closure. A new law on the execution of civil judgments is supposed to address some of these problems, but there does not seem to be a comprehensive plan in place for the implementation of this new law. Few judges the team met with could explain how the execution of civil judgments will work under the new regimen. Clearly, more training for judges needs to be done on this, as well as training of the court clerks and the judicial police who will ultimately be called upon to execute such civil judgments.

The donor community has long been aware of the problems with court administration and is beginning to take some steps to address them. In 2002, IJC published a significant report, "Justice in Due Time," which addresses major issues related to court administration in BiH. The report led to the development of an IJC project funded by the Government of Norway that is implementing some court administration reforms on a pilot basis in three courts. The IJC is also preparing a new law on courts and a new standardized Book of Rules, both at the entity level. Management of courts is one of the main topics which will be covered by the new Book of Rules. USAID/ERO is also conducting an assessment of court administration and case management. In addition, CEELI will be sending judges and staff to Austria for 10 days in May/June with World Learning to look at court administration there.

Obviously, however, there is much more to be done. First, the team has a sense that the huge number of property cases that are clogging much of the system may either no longer be relevant or are duplicative of cases that have been filed and perhaps resolved in other forums. Other cases, some of which date to before the war, may also no longer be relevant. Some kind of review of these cases, using modern technology, may be able to weed out a large number of them and to identify those that are still ripe for adjudication. Perhaps this is better done by the newly appointed judges, who can be instructed to take a more proactive approach to clearing the courts' dockets. The team was advised that most judges still work on a quota basis: they are told to resolve a certain number of cases each month, and when they resolve those cases, they are finished for the month. In addition, it was clear that most judges end their business day by the middle of the afternoon. Some, but not all, judges are not working that hard, and are not trying to resolve more cases than they are required to according to the targeted quotas. To be frank, while judges complain vociferously about the caseloads, it lies within their power more than anyone else's to do something about it. Considering the salaries that judges are now paid, they should be encouraged to redouble their efforts to clear their dockets and get on top of their caseloads. Perhaps the "quota approach" also needs to be done away with. This issue will be addressed by IJC in its preparations for the new Book of Rules.

Second, the team is concerned that the donor community may be approaching court administration reform in a piecemeal fashion. According to the IJC

restructuring plan, there will be a total of 47 first instance courts, six first instance branches (satellites of other courts), and 15 second instance courts, with a total of 629 judges, in the two entities. This is a relatively small system, and it would not be difficult to develop simple and more efficient case management and tracking techniques that would be uniformly applied, and to provide the necessary, minimal equipment. The potential problem with doing pilot projects is that several donor organizations may develop their own pilot projects which will result in a hodgepodge of different court and case management techniques and software being introduced. Therefore, pilot projects should be carefully coordinated with other donors and should include advance financial and programmatic plans for expansion of successful pilot activities. The donor community should come together on this issue, one system agreed upon, and the requisite equipment provided and the training conducted.<sup>18</sup>

Third, the team was concerned that judicial clerical personnel are being neglected. Currently Court Presidents spend too much time on administration. Several judiciaries, including in Russia, are starting to introduce stronger court clerks, who can free up judicial time by taking on tasks, such as assigning cases, reviewing case filings, and answering questions from the public, that judges now perform. This would, of course, require training clerks and other court personnel. Little training of such personnel has been undertaken thus far in BiH. The IJC is developing a proposal that would place one Court Administrator in every court that has eight or more judges; no additional detail on this proposal was available.

Minor Offense Courts constitute an important part of the judicial system (there are 93 such courts with 335 judges in both entities), and are where the public comes in frequent contact with the adjudicative function of the state. The team, however, did not have an opportunity to review the role of the Minor Offense Courts in any detail, although JSAP conducted a study on them in 1999. The IJC is currently working on a draft law to govern their activities. An analysis should be conducted (perhaps by IJC) on how to restructure the Minor Offense Courts, using the same analysis that has been used for other courts.

### *Work Conditions*

The work conditions in most courts, in particular at the lower levels, are insufficient. In many locations, two or three judges work in one office, and the judges must make do with only one courtroom, which is usually used for criminal cases while civil and commercial cases are heard in the offices of the judge, thereby inhibiting the transparency and openness of the process. Other changes will be required under the new criminal procedure codes, such as developing a means to record proceedings. Court security also needs to be enhanced, although the new Judicial Police are providing improved protection in the Federation.

IJC and OHR are now conducting an assessment of court premises and will develop a proposal (due in mid-April) for the funding of basic improvements of

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<sup>18</sup> According to IJC, the Norwegian-funded court administration project and ICITAP are developing a case tracking system that will be implemented in the three pilot courts with the intention of eventually implementing the system in all courts that have the necessary hardware to support the system. However, it is unclear at this time how courts will acquire the hardware and whether funding is secured for this nation-wide plan.

existing premises.<sup>19</sup> Taking steps to ensure that adequate funding is allocated to the judicial system is the only way to ensure improved work conditions on a sustainable basis. As already noted, putting in place an agreement under which the judiciary would be entitled to recover some of the revenue it generates would be one way to begin to address this need, which in the long run is dependent on improving the economy and tax revenues.

### *Training and Information*

Another significant challenge facing the courts, especially with the implementation of the new procedural codes impending, is ensuring that both new and sitting judges are appropriately trained. Pursuant to a law imposed by OHR in May 2002, two judicial and prosecutorial training centers (JPTCs) are to be created, one in each entity.<sup>20</sup> Supervisory boards have been appointed and they in turn have appointed two directors based on HJPC recommendations. The HJPC is to approve the curriculum (for both introductory and continuous training) of the JPTCs.<sup>21</sup>

The JPTCs will enjoy significant international donor support, in addition to the funding to be supplied by the entity governments. OSCE is coordinating this support (and working with the entity governments to ensure their funding contributions), but the lead funding agency seems to be the COE, which, with 1 million euros from the EC, will help build the capacity of the JPTCs, develop curricula, and train staff. The COE will initially focus on skills areas, such as court and case management, dealing with the media, etc., and then starting in 2004 – 05 move on to some substantive areas, such as criminal and civil law, and the ECHR. The COE will also help develop commentaries on laws to be used in trainings, and hopes to use trainers to gather information, during the trainings, on how the laws are working and to propose revisions to legislative drafters. The COE, together with CEELI, will also train staff in how to develop curriculum and run a training center. The U.S. State Department, as well as the Dutch and Swiss governments, have pledged material support as well.

Establishing the JPTCs has, however, taken longer than expected, and the donor community has picked up some of the slack in the meantime. The Training Coordination Unit of OHR is charged with coordinating all the donor efforts in the area of training. The following are the most important judicial training efforts:

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<sup>19</sup> The Criminal Institutions and Prosecutorial Reform Unit (CIPRU), part of OHR, helps to design the infrastructure of the prosecutorial legal system from legislation to logistics, including architectural design and renovation of courthouses. IJC is doing the same for court premises. Much of the renovation at this time is temporary until the full impact of new laws is better understood, but CIPRU and IJC are identifying buildings, scheduling reconstruction and has national staff on site.

<sup>20</sup> The decision to create two centers was made for political reasons (according to sources) and the team believes that one center would probably be sufficient for the task, would be more cost effective, and would help to harmonize practice in the two entities.

<sup>21</sup> The team was unable to meet with a JPTC representative in the Federation, but in the RS, the head of the steering board reported that the JPTC had been legally established, that offices (at a correctional center) had been provided, and that 300,000 KM from the budget (meant to cover operations, not trainings) had been allocated. He expected that a director will be selected soon. The steering board has nine members, serving as volunteers: two judges from the SC, two prosecutors, and two professors from the law faculty, and then some lower court judges and prosecutors. The steering board is appointed by the HJPC, and must meet once every two months. Once the director is selected, he will develop the curriculum and present it to the board, which will then present it to the HJPC.

- The COE just completed a three year program (partially funded by the U.S. State Department) which trained about 650 judges on the ECHR. As a part of this program, the COE is also distributing key decisions from Strasbourg, and is producing a bulletin with decisions of particular relevance to Central Europe. It is tracking impact by asking judges to submit to the COE copies of their decisions where they have cited the Convention, and have received about 100 such decisions. In addition, a number of judges have called to ask for follow up information.
- The United States Department of Justice (DOJ) has been training judges on the new criminal and criminal procedure codes. It is anticipated that this work will be continued through the JPTCs.
- CEELI is conducting periodic training of judges on the upcoming civil procedure code and the new enforcement of judgments law, CEELI is also doing some relatively limited training with judges (and attorneys) on alternative dispute resolution (ADR).<sup>22</sup>
- IRIS, a new program, is beginning to train judges on administrative law.

Some additional training needs were also identified during the course of the assessment:

- Court staff and clerks are not being included in any training right now. OHR and IJC have requested that the Swedish International Development Agency (SIDA) look at this, but no commitments have been made.
- The new commercial judges will be in need of focused training, in particular on topics such as bankruptcy.<sup>23</sup> Again, OHR and IJC have approached SIDA and ERO on this, but again no commitments have been made.
- The State Court judges are not going to be included in the JPTCs, but they seem to be getting a fair amount of training now (in particular from Spain). One area that does not seem to be covered is war crimes and coordination with the Hague tribunal, and that is an area where training will be needed.

In terms of distribution of laws and other information, judges receive copies of the Official Gazettes, but do not generally obtain copies of commentaries or other jurisprudence that might help them to interpret and apply the laws. Some organizations, such as the COE, are providing commentaries, and it is hoped that the JPTCs will ultimately begin to do this work themselves (and generally take on the task of information dissemination).

### *Quality of Judges*

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<sup>22</sup> In former Yugoslavia, there was a functioning arbitration code, so ADR is not an entirely new concept. The Canadian International Development Agency (CIDA) also trained some judges as mediators in 2001, but there was little follow-up. The World Bank may create a pilot mediation center, focusing on either commercial or family law. World Learning will send some ministry officials and people from the drafting commission to observe the mediation system in England and Ireland, in time to affect the drafting of a new law on ADR that is currently in the works.

<sup>23</sup> The RS adopted a new law on bankruptcy and liquidation that went into effect on January 1, 2003. The Federation is lagging a little, but the law is expected to be passed soon. The need for training in this area extends beyond judges to include lawyers, clerks, and trustees.

Improved court administration and training for judges will help to build the judiciary in BiH, but there is a deep fear among many in both the legal and donor communities that there are simply not enough qualified judges or potential judges to go around. Although the restructuring was expected to lead to the replacement of many judges, most of those who have already been appointed were judges previously. This is not surprising since only higher tier courts have been filled so far. There is a concern that there will be even fewer qualified candidates as the HJPC goes further down to the lower courts.<sup>24</sup> One RS lawyer explained that the problems lie “not with inadequate laws, but with the people and institutions . . . In Banja Luka, there are 50 judges, but only about 5 or 6 of them are capable of resolving cases – the rest are just circulating them.” This gives rise to a lack of public confidence in the system, and the belief that corruption, no matter how well judges are paid and trained, will always play a central role in the decision-making. In addition, the politicians and the police are always blaming the judges and the prosecutors for societal woes, and the judges do not answer back. It is essential that the newly appointed judges move quickly to establish their credibility with the public by swiftly and fairly adjudicating cases, and answering their critics by their deeds.<sup>25</sup>

### C. Recommendations

#### 1. *Build the Capacity of the HJPC and Improve Financial Support to the Courts*

Goal: To build the capacity of the HJPC to manage the court and prosecutorial systems. The new HJPC is charged with much of the managerial oversight of the courts that was previously done by the MOJs, including developing budgets, developing better court administration and case management routines, overseeing appointments and ethical investigations, and overseeing the work of the JPTCs. Current law suggests some conflict between the authorities of the MOJs and the HJPC with respect to court budgets, but the Independent Judicial Commission indicates that such conflicts should be resolved in the near future. In any case, the HJPC will need help to carry out its functions according to the law. This should include technical assistance, mentoring, and training in budget development, lobbying for budget allocations, overseeing ethical investigations, and overseeing the JPTCs. As a part of the budgeting process, the donor community should encourage the entities and the State to agree (by legislation or otherwise) to allow a percentage of the fees and fines that the judiciary generates be returned to the court system, to allow adequate financing and development of the courts. Such a program could and should be done in conjunction with the court administration reform program that is described in the next recommendation.

Partner: The HJPC and the IJC (until the end of its mandate).

Donor Role: This is an area where the USG can take the lead by, for example, providing experts to shadow important positions at the HJPC as they begin their work. Additional support may be needed to help with the more specific areas of responsibility and with projects which are initiated by the HJPC, such as minor offense restructuring, budgeting, development of an ethics code, ethics in general, and supervising training.

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<sup>24</sup> In the first round of applications, for the highest levels of judges and prosecutors, the HJPC received 300 applications for 89 positions. In the second round, for the lower positions, the HJPC received 1,617 applications for 875 positions.

<sup>25</sup> Improving the talent pool will ultimately depend on improving the education system, discussed *infra*.



Timeframe: 2003-2007

## 2. *Court Administration Reform*

Goal: To help the judiciaries systematically address the current case backlog and to put into place systems for efficiently handling their future caseload.

Partners: The HJPC, the judiciaries.

Donor Role: Although some in the donor community are already working on this issue, in limited capacities, and a more in-depth assessment is being prepared by ERO, the donor community and the judiciaries in BiH need to take a more holistic approach to the issue of court administration and caseload. For example, citizens, it seems, file the same claim in multiple jurisdictions, such as with the court system, the HRC, and the ombudsmen. Other claims may no longer be ripe, insofar as a settlement may have been reached or the need for the lawsuit was vitiated by executive or OHR action. Technical assistance provided by the USG could help the various systems review the older pleadings, determine whether they are still ripe for review, and if they are prioritize them for immediate action (if they are no longer ripe, they should be dismissed and the docket cleared). The new Bosnian judges, and in particular the court presidents, need to take the lead in addressing the backlog, and be willing to handle more cases than they are required to under the current quota system (which perhaps should be done away with). Looking to the future, and based on the existing studies and pilot programs, new case management, docketing, and automation techniques should be developed and introduced, but only on a national level, not a pilot basis – the country is simply not that large and the costs are not that great. The donor community needs to create a separate management group, with Bosnian participation and leadership, on the issue of court administration and management. That group could identify which donor organizations have the funding and expertise to implement the reforms on a national basis. The implementation of the new procedural codes, which provide some mechanisms for more efficient judicial processes, should be hastened, with in-depth training for judges and clerks. In general, clerks should be given more responsibilities and be trained to handle them. Finally, another significant cause of delay is the failure to execute judgments. Although a new law has been imposed on this, and some training conducted, judges who the team met with did not seem familiar with the law, and as with the other areas of new legislation a greater emphasis needs to be placed on implementation, which may require the “shadowing” of the enforcement clerks and additional training for the judicial police.

Timeframe: 2003-2007

## 3. *Conduct Targeted Training of Judges*

Goal: Although the JPTCs should in the medium to long term provide the training that judges need, there are some areas of specific need that are not being addressed and in which training is required immediately. As noted above, this continued training is an important part of the recommended approach for improved implementation of the legislative framework.

Partners: HJPCs and the judicial associations.

Donor Role: The JPTCs are slated to receive significant support from the COE, and so the USG should step back from providing them with significant funding at this time. Considering, however, that the JPTCs may not be operational for a while yet, the USG should maintain its high level of training activities for judges, in particular on the new procedural codes. (As discussed elsewhere, more than training should be provided; technical assistance, in the form of experts embedded with the judiciary and training manuals should also be provided). ERO should consider providing intensive training to the new commercial judges, once they have been selected, on issues such as bankruptcy, competition law, and intellectual property. The new State Court seems to be receiving sufficient training from other sources, but the USG may want to start to help it address its future war crimes docket by providing training and the technology necessary to link it with the Hague court, an area where this new court is not receiving any assistance.

Timeframe: 2003-2007

#### **IV. ACCESS TO JUSTICE**

##### **A. The Right to Representation**

In many ways, access to justice is not an issue in Bosnia: given, for example, the high number of court filings, citizens seem well informed about their rights, and are eager to enforce them, at least as they pertain to protecting their property rights and contesting government administrative actions. Moreover, there do not seem to be many impediments to the courts: for many matters, one does not need to be an attorney to appear in court, and court filing fees do not seem to be excessively high. And yet, in other ways, the access to justice that citizens seem to enjoy is not necessarily meaningful. Seeking an enforceable decision against a state agency, for example, must eventually begin to resemble the search for the Holy Grail. Of even greater concern, however, is the representation that is available (or not) to criminal defendants.

##### *Criminal Matters*

According to the new criminal procedure code, criminal defendants facing a potential sentence of three years or more and are unable to pay for an attorney are entitled to have one appointed for them ex officio by the court and paid for by the entity. Two serious concerns arise out of this arrangement:

- Indigent defendants who may be subject to less than three years in prison are not entitled to representation. You can, of course, represent yourself and have a friend or relative assist you, but that does not provide the same level of protection that a lawyer would presumably provide. It was reported that you can still ask the judge to appoint a lawyer for you, which request is usually granted, but it is unclear whether the defendant is informed of that right, how often it is respected or ignored, etc.
- Lawyers who are appointed are not being paid. The president of the cantonal court in Zenica quite candidly told the team that she did not have any money to pay ex officio attorneys. Recently, lawyers went on strike to protest the failure to pay them. Part of the problem may be that the fee structure is not realistic. A

lawyer is entitled to 450 – 750 KM to accept the case, and then an additional 30 KM per hour.

### *Civil Matters*

There is no right to representation in civil matters. Under the old civil procedure code, anyone, without having graduated from law school, could appear in court. The new law on lawyers says that only lawyers can appear in court, and it is unclear whether the new civil procedure code will reconcile this apparent contradiction.

One other means of access to justice is through one of the offices of the ombudsmen, of which there are (as usual) three in BiH: one at the state level, one in the Federation, and one in the RS. A condition for accession to the COE was the consolidation of these three offices, but that has not yet occurred. In any event, ombudsmen are not empowered to appear in court or to pursue individual claims. Their role, rather, is to publicize human rights abuses, or to complain to offending authorities.<sup>26</sup>

### B. Donor Activities

As in most countries in transition, access to justice in BiH has received less attention from the donor community than the other sectors of legal reform. The following are the few exceptions:

- The international community assisted in the creation of a legal aid department in Brcko. (Although it is small, this does provide experience in BiH from which the donor community can build should a decision be made to create a national legal aid system.)
- Soros supports a legal aid program in Mostar (which also covers part of the southern RS and part of western Herzegovina) that employs five lawyers who represent refugees and displaced persons, and also works on some domestic violence and labor issues. With UNHCR, the International Refugee Council, the American Refugee Council, and a network of local NGOs (including Iustitia), Soros is seeking to create a legal aid system at the national level.
- Soros (together with some other donors) is supporting legal clinics, but most of these do not offer representation to citizens. They are discussed in the section on legal education.
- CEELI is supporting an Access to Information Public Advocacy Center. In late 2001, OHR imposed freedom of information laws (FOIA) on the State, the Federation, and the RS. The Center is intended to help citizens take advantage of those laws. The Center has so far had limited impact (it has handled only 100 clients and about 200 requests in the last 10 months, but with about a 75 % success rate) because the NGOs and media organizations that would typically take advantage of such a law are too weak or unwilling to do so in BiH, or are unaware

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<sup>26</sup> The RS Ombudsmen claimed a high degree of success in this area. In 2002, it handled 17,000 requests from citizens, and 65 % of its recommendations for resolution were adopted. Most complaints are based on violations by municipal authorities, and many of those concerned property rights. The second highest number of complaints related to court delays.

of the new legal standards. CEELI is now undertaking a program to increase awareness of the Center, and is reaching out to NGOs. CEELI will also do a monitoring activity, checking government offices to see whether they are doing such things as appointing public information officers and issuing annual reports, as required by the law. The CEELI activity is being complemented by a training program implemented by USAID's World Learning program that will train public officers on issues related to compliance with the FOIA requirements.

- DFID may start a project that would help the citizens to interface with the justice system, such as obtaining information from the courts.

## C. Recommendation

### 1. *Establish a Legal Aid (Criminal/Civil) System*

Goal: To develop a public defender or legal aid system for BiH. Even under the new criminal procedure code, only criminal defendants who are facing potentially three years or more in prison have the right to free representation. This is still a considerable period of confinement.

Partners: The MOJs, NGOs.

Donor Role: Establishing a national public defender or legal aid system is an expensive undertaking, but it is important because the lack of meaningful representation, at both the criminal and civil levels, jeopardizes other reforms and endangers public confidence in the legal system. In addition, under the new criminal procedure code, a greater emphasis is placed on the role of the advocate, and so it will be even more important for the indigent accused to have access to capable counsel. Establishing a legal aid center will require close donor coordination and, in order to be sustainable, a strong governmental partner. The Open Society Institute (Soros) is the only donor that has taken a direct interest in this area, and would be an important partner, but it does not have the capacity or resources to develop a national or even entity level public defender's office. The role of the USG at this point should be to catalyze the donor community and the governments in BiH to recognize the importance of this issue. It should do this by commissioning an in-depth study of the issue, followed by a conference with the government and other donors on improving access to justice. The report should begin to look at issues relating to the size of such an office, make cost estimates, determine at what levels citizens would be entitled to representation in criminal and civil matters, etc. In the longer term, the EU and other donors will need to be brought in (the legal framework should perhaps be based on European models, for example), and USG assistance perhaps can be limited to training and technical assistance. In addition, the creation of such a system should also include a strong public education component.

Timeframe: 2004-2007

## V. **CRIMINAL JUSTICE REFORM**

### A. Overview

Acknowledging that the majority of citizens encounter the legal sector through civil or commercial matters, the fair and just administration of a country's criminal laws is the sole provenance and responsibility of the legitimate government. In

addition, providing an environment secure from crime is essential to economic development and the protection of human rights, in particular in a country with BiH's history. Thus, the international community, and the USG in particular, has placed a significant emphasis on criminal law reform and working with prosecutors and police.

The most important recent development has been the imposition of new criminal and criminal procedure codes at the State level by the OHR (effective March 1, 2003). These new laws constitute a radical move away from the inquisitorial system of justice traditionally embraced by BiH and towards a more adversarial system. (The entity law remains in force within the entities but is expected to be harmonized to the State law.) This dramatic change eliminates the traditional role of the investigative judge, vesting responsibility for leading criminal investigations in the prosecutor as advocate assuming the burden of proof, a role that has been enlarged and strengthened by the adversarial procedures imposed. It is no longer the role of the court and investigative judge to conduct the investigation and ultimately try a criminal case, but rather the court will now act solely as the neutral arbiter of law and fact.. It is to be expected that such a radical change in the criminal justice sector over such a short period of time brings with it a great deal of uncertainty and fear, as was expressed repeatedly to the team by judges, prosecutors and lawyers throughout BiH.

Implementation of these new laws requires helping the judiciary, the prosecutors, the police, and the bar address an entire set of relatively novel concepts, including prosecutorial discretion, correcting the apparent imbalance of increased police power with the loss of the investigative judge, compelling testimony, witness protection, and plea bargaining. This new adversarial process also raises issues with regard to evidence including forensic analysis, chain of custody requirements, secure storage for evidence as well as cataloguing needs, maintenance and security. Additional work may be needed in the areas of witness protection, asset forfeiture and money laundering. Finally, the new CPC also mandates the use of court reporting and the preparation of transcripts.

The HJPC, together with the DOJ resident legal advisor (RLA) from the Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) and representatives from the DOJ's International Criminal Investigative Training Assistance Program (ICITAP) are well aware of these concerns. Working together, both formally and informally, these three components developed an overarching strategy to facilitate the implementation of the new CPC and Criminal Code. This strategy is commendable because it addresses virtually all of the concerns raised with regard to the rapid implementation of such dramatic changes and also because these components have reached out to other components within the international community in order to ensure that their respective constituencies have the benefit of the comparative advantages and resources found throughout the international community. OHR has tasked OPDAT with the training of judges and prosecutors, and ICITAP with training police, resulting in some remarkable progress. As discussed in the section on bar reform, CEELI has conducted some programs for the bar, but overall fewer resources are being placed on preparing the bar for the new procedures.

#### *OPDAT*

OPDAT's plan for CPC training is loosely modeled on the successful training conducted in the District of Brcko in 2002, modified by the RLA to ensure the training of more than 1,000 re-appointed judges and prosecutors over a minimum of 14 training sessions. The training is divided into two general areas. The first part consists of a one-week classroom program of lectures, demonstrations and exercises examining all substantive changes in the code, especially the alterations to the traditional roles of prosecutor, judge and police. This part of the training will also include a one-week "train-the-trainer" component.

The second part of the OPDAT training program places an experienced U.S. or international prosecutor and judge within prosecutor's offices and courthouses, respectively, to provide mentoring and support in the actual practice and implementation of these dramatic changes to the Bosnian legal system. This mentoring and support will include case reviews, courtroom observation, demonstrations, evaluations and assessments. OPDAT emphasizes the importance of the field placement as an invaluable resource providing actual and real-time advice and assistance in the applications of the new procedure code while working one-on-one with judges and prosecutors.

It is anticipated by the RLA that resources required for the field training component of this program will require a minimum of 10-12 experienced international prosecutors and 50 international judges for 30-day assignments. Fewer prosecutors and judges will be required if those volunteering for the Bosnian assignment are willing to commit to more than 30 day tours. The RLA has invited prosecutors and judges from the District of Brcko to participate in the training process. The RLA has already secured two international instructors for a one-year detail and OPDAT will provide a US prosecutor for a period of one year. The RLA has vetted all instructors through HJPC and has invited the OSCE, to participate in field training in order to develop appropriate training programs for the JPTCs. The Resident Legal Advisor is also aware of European sensitivities to legislation and procedures that are perceived to be "too Americanized" and is working closely with the HJPC, OSCE and COE to ensure that the OPDAT training curriculum is incorporated into the JPTC curriculum and standardized throughout BiH.

Finally, the RLA has committed to the development, in translation, of instructor's manuals, prosecutor's manual, a judge's benchbook, the rules of evidence, and student materials for field reference, which will also be shared with the JPTCs, thereby contributing to the institutionalization of this training program within Bosnia.

### *ICITAP*

ICITAP has historically been responsible for training civilian police throughout the world. Prior to the arrival of ICITAP in Bosnia in 1997, there had constant turnover in the authorities within the international community that were responsible for civil policing. This constant turnover resulted in a lack of institutional memory within the Bosnian police forces.

In 1997, as a result of an assessment conducted jointly by ICITAP and the U.S. Department of State, an aggressive training and development program was devised to create a modern police force within BiH. The first four years concentrated

on democratic foundations of policing. Now, the focus of training is on specific development needs including: forensics, case management, organized crime and terrorism.

ICITAP is hoping that future training will include expanded organized crime initiatives that include intelligence collection, support for initiatives, and the development of an information management system that will make data law enforcement friendly. This also implies some form of modification or relief from the European data protection and privacy laws. Information management by police, including the investigative use of civil and vehicle registries, as well as reliance on international wants and warrants, is seriously impacted by the current European Convention on Data Protection and Privacy.

The ICITAP police training agenda seeks to standardize Bosnian civilian police at a level of performance consistent with prosecutorial requirements and consistent with the levels of expertise experienced within the region. ICITAP's success is apparent in the operations of the State Border Police, which is the only national police department that is up and running.<sup>27</sup>

ICITAP has developed an evaluation process that BiH has adopted for purposes of police advancement and skill enhancement. As a result, evaluations of police officers are focusing more and more on actual skill and abilities rather than political power. Promotions are beginning to be based on evaluations. The issues of pay parity and standardization are important both in terms of combating corruption and in ensuring the retention of officers upon completion of training. The State Border Service established a monthly salary range of 800-1300 km, significantly increased over standard police pay, resulting in a huge exodus of officers from the regular police forces. This is not a desired result after the financial and political investment required to ensure police training to an appropriate standard.

There are informal discussions, within the appropriate ministries within the entities, on the topics of standardization of police salaries, tying promotions and advancements to education and training, re-certification of officers, training and the development of advanced police courses.

The experts at ICITAP reinforced the perception of the team that there appears to be some lack of clarity among both prosecutors and police officers regarding the new role of the prosecutor during an investigation. Some police think prosecutors will physically undertake the investigation itself as opposed to a management role, as it should be. As a result, ICITAP and OPDAT have designed a joint training program to develop and hone the ability of police and prosecutors to work together while keeping expectations realistic. ICITAP has invited the newly arrived European Union Police Mission (EUPM) to participate with ICITAP in providing concepts, training, follow-up training and mentoring support to the Bosnian civilian police. ICITAP personnel are in the field with the Bosnian police, serving as mentors and advising on ongoing training needs.

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<sup>27</sup> The State Police (SIPA) was originally conceived of as a national police force but ethnic politics intruded and it was gutted in order to get other needed legislation passed. Now OHR intends to start adding legislation to give SIPA teeth.

Due to the previous efforts of ICITAP, there are now two Bosnian Police Academies plus an academy for the State Border Service. These academies have standardized curricula, including six months of academic study and six months of field training. All candidates must have a minimum of a high school education; undergo a physical and psychological exam as well as a background check. As a result of this standardization of criteria, women flocked to the police academy in the aftermath of the war. One graduating class from one academy was 87% female. However, full integration of women into the force is an evolutionary process. The public face of the police is changing, though, and ICITAP is noticing a subtle but positive change in public attitudes towards police and estimates that viable public trust will be accomplished over of a period of 4 to 10 years.

## B. Recommendations

Other than supporting the HJPC and establishing the public defender system described above, the team does not make any recommendations for new programs relating specifically to criminal justice reform. The DOJ and ICITAP programs appear to be largely successful, but a full evaluation was beyond the scope of this assessment. A more comprehensive evaluation should be undertaken in the near future in order to specifically identify impact, inform 2004 budgeting decisions, and establish a timeline for phasing out these programs. As noted in other recommendations, additional initiatives in terms of training and technical assistance to the bar and other institutions are necessary to ensure fair and full implementation of the new criminal and criminal procedure codes.

Finally, the need for reform of the penitentiary system came up frequently, but was beyond the scope of the team's review. This area warrants further study and recommendations.

## VI. **BAR REFORM**

### A. Overview

New laws on the bars in each entity were imposed in 2002. Two entity level bars were created, and in the Federation five regional bars, each one covering two cantons, were also created (there used to be two totally separate bars in the entity, one for Croats and the other for Bosniaks, but these, with the help of CEELI and according to the law imposed by OHR, were merged into the current structure).<sup>28</sup>

In either entity, one joins the bar by graduating from law school, doing a two year apprenticeship, possessing a good reputation in the legal community, and passing an examination administered by the bar, and paying an admission fee.<sup>29</sup> There are

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<sup>28</sup> CEELI helped to implement the new law on the bar by creating model statutes and ethics codes for the five branches in the Federation. But the bars were given only 60 days to implement the new law, including setting up these branches, which was very difficult. The bars have largely complied, but could not accomplish things like developing a malpractice insurance plan, which still remains undone. CEELI is also helping to put together two study tours for the bars, one to Nuremberg (partly funded by that bar) and the other to Paris (funded by World Learning).

<sup>29</sup> The Federation recently raised the fee to join the bar from 3,000 KM to 10,000 KM. When the team remarked upon this increase, some reported that it would be waived for newly graduated lawyers, and



some 665 members of the Federation Bar, and 376 lawyers in the RS bar, with an additional 25 associates and 28 candidates. Last year, the RS Bar accepted 40 out of 44 applicants.

Both bars have adopted codes of conduct and have disciplinary commissions to enforce them, but they do not seem to be getting very much use yet. The regional bar in Zenica had not yet sought to discipline any of its members. In the RS, last year the bar received 18 complaints, of which it found that 16 were baseless and that two required further investigation.

Both bars said that there was good cooperation between them, but a merger seems unlikely at this point. They recently had a joint meeting and set up joint committees on human rights, civil law, and criminal law, but the best near term result might be a the creation of some kind of umbrella organization, as with the two judicial associations. On the positive side, the RS lawyers reported that they encountered no problems practicing in the Federation, and vice-versa. CEELI has been working with the two associations to try to improve cooperation and move towards an eventual merger.

In February 2003, the RS Bar was accepted into the International Lawyers Union in Paris.

## B. Issues

Two important problems, in addition to the question of consolidation, are facing the bars. One, noted in the discussion on the legislative framework, is that the Federation Bar does not feel that its voice is being heard in the process of drafting legislation. The Bar should create a committee on legislative advocacy that would work to address this concern, and to improve lines of communication both with OHR and the Federation and State Assemblies and MOJs. CEELI should be able to assist them to develop this “lobbying” capacity.

The second concern is that neither bar is doing enough to educate its members concerning the evolving legislative framework. In both the new criminal and civil procedure codes, it is envisioned that lawyers will have a more active role to play in dispute resolution, including the use of plea bargaining, a totally new concept for BiH. Lawyers also need to be trained to raise issues relating to the ECHR. Although CEELI has conducted some training for lawyers, having developed a curriculum for lawyers on the new criminal codes and trained some 700 lawyers on the criminal codes in two months and almost 100 lawyers on the new civil code and law on enforcement of judgments, the lawyers are likely to need a greater level of assistance in implementing the codes, such as having lawyers with experience in adversarial or hybrid systems work side by side with defense lawyers for a time. In addition, although judges and prosecutors will have an institutional, government supported, training center, the lawyers will not. The two bars should either come together to establish some sort of training center, or ask the JPTCs to include lawyers (paying a fee, if necessary, which

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others said that they were hoping to dissuade judges who are not reappointed to the bench from seeking to join the bar. In the RS, it costs only 2,000 KM to join the bar. While this is likely to rise, one RS lawyer noted that there would soon be 105 judges out of work in the RS, “and we do not want to close the door on them.”

could help to build their sustainability) in their programs. The RS Bar, it should be noted, has created a committee to develop educational materials on the new codes, but it has not taken any further action yet.

### C. Recommendations

The USG should continue its efforts in bar development and professionalization, including facilitating the dialogue on a potential merger of the bars in the two entities. Two other recommendations for bar reform are largely subsumed in the other recommendations. First, the donor community can help to develop the bars' legislative advocacy skills so that the opinions of the bars are heard in the development of legislation. The Bar should create a committee on legislative advocacy that would work to address this concern, and to improve lines of communication both with OHR and the Federation and State Assemblies and MOJs. USAID programs should be able to assist them to develop this "lobbying" capacity. Second, recognizing the increased importance of the role of the advocate in Bosnia's evolving legal system, the bar needs to take an institutional approach towards training its members, either by being included in the training already provided and planned for judges and prosecutors, or by establishing its own legal training center.

Timeframe: 2003-2007

## VII. **ADMINISTRATIVE LAW REFORM**

### A. Overview

An examination of administrative law in BiH provides a good example of how governance deficiencies outside of the legal system ultimately impact on it and the public's attitudes about the rule of law and the state of democracy.

The international community tends to view the rule of law as the performance of legal institutions such as courts, prosecutors, lawyers and police. The international community is also giving significant attention to criminal justice reform. For the USG, criminal justice reform is essential to root out organized crime, corruption, and illegal funding of war criminals and terrorists. Bosnians the team interviewed, however, especially those outside of the legal profession, have a somewhat different set of priorities. While recognizing the need to attack corruption and organized crime, Bosnians also seem to give equal or greater attention to the performance of municipalities and lower levels of the courts and public administration that impact directly on their lives.

Bosnians stressed the importance of concrete and tangible measures that reduce discrimination and abuse, improve citizen service, and help citizens have a sense of dignity and efficacy. So far, the various entities that govern Bosnia -- with some notable exceptions at the municipal level -- are largely failing in this regard. Obtaining basic citizen benefits, such as property return, social security, pensions, certificates, and licenses, is an exasperating process that is a mystery to the average citizen (unless he is willing to pay a bribe). Business inspection is arbitrary and

abusive, generally giving successful businesses little option but to participate in at least small scale corruption.<sup>30</sup>

Given its ongoing priorities, the international community has not given municipal governance a high priority. This may change in the coming months, however, with OHR producing a statement on municipal policy. For a variety of reasons, municipal governance is often not seen as a dimension of the rule of law or as even important to overall governance. This needs to be reexamined, given the important role municipalities play in providing critical services, and that dysfunctions at this level find their way into the courtrooms. Moreover, municipalities stand at the end of a long chain of bad governance, beginning with a hollow state, entities without a stable source of funding, the inefficient cantonal structure of the Federation, and the centralism of the RS. The lack of a tradition of citizen participation poses an obstacle to reform, as citizen demand or apathy influences the quality of governance.

Though outside of the formal legal system, municipalities (and the police force) shape citizen attitudes to the rule of law and democratic governance. The municipality and other lower levels of government are the face of governance to the average citizen, and the locus of personal needs such as obtaining permits, licenses, certificates, and entitlements. Interviews with several Bosnians suggest an overwhelming sense of powerlessness as applications are ignored (unless someone has political clout or pays a bribe), or citizens are told to collect information that agencies are required to share ex officio to simplify procedures. In spite of the poor track records of the courts, nearly 12,000 cases have been filed or have reached the Federation Supreme Court, mostly from cases arising from municipal or cantonal inaction.

Studies both from Europe and Latin America have shown the correlations between support for democracy and satisfaction with municipal service. The poor performance of municipalities, exacerbated by poor court performance, cannot help but undermine confidence in democracy and the objectives of the international community.

#### B. Current Donor Activities

USAID has decided to leave donor leadership on property to the OSCE. With administrative procedures imposed in 1998, the pace of claim resolution has picked up, and OSCE is targeting a completion of the claim process by the end of 2003.<sup>31</sup> Increasingly, attention is turning to business, employment, and social benefits issues. Thus the recent launching of the Administrative Law and Procedural Systems (ALPS) Reform Project, implemented by IRIS, is very timely. ALPS takes an integrated approach toward administrative law, including legal reform, local government decision making, and business inspection:

- Legal reforms will attempt to increase judicial efficiency, limit appeals, and restructure relationships among municipalities, cantons, and the Federation. It

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<sup>30</sup>When municipal revenue declined in Zenica, the municipality responded by increasing inspections to raise revenue from fines.

<sup>31</sup> Actual return is lower than the rate of claim, since many claimants sell their property, a fact lamented by several persons we interviewed, but outside the scope of our assessment.

consists of support to the IJC in amending the Law on Administrative Disputes (LAD), followed by organizing a working group to draft a new Law on Administrative Procedures (LAP), and later assistance to OHR for a new Law on Administration (LA). The LAD is designed to reduce backlog from courts, LAP conforms administrative procedures to a Civil Procedure Code (currently in draft) and the new LAD. Finally the Law on Administration is an OHR-led initiative designed to restructure relationships and responsibilities within the Federation's levels of government, and is contingent upon the enactment of a Federation Civil Service Law.

- Local government decision making pilots in the Zenica-Doboj Canton aim to increase transparency and public participation.
- Inspection reform activities will rationalize the inspection process, train inspectors at municipal and cantonal levels, improve communication with businesses and the public, remove legal constraints to business permitting and approval, and assist the Federation Ministry of Justice in supervising the inspectorate.
- IRIS is also supporting training judges in the new laws and the development of an Administrative Law Clinic at the University of Sarajevo Law Faculty.

The ALPS activity is still in its early stages and is reformulating its priorities in light of initiatives coming from the international community. However, it has succeeded in establishing close coordination with the USAID municipal projects implemented by the Cooperative Housing Foundation (CHF) and PADCO. PADCO's program, which started also in late 2002, promotes greater transparency and municipal performance in seven municipalities in Northeast Bosnia (four municipalities in the RS, two in the Federation, and one in Brcko District). CHF's program, ongoing for the past 18 months, complements IRIS by assisting business and homeowner associations in pressing for reforms. It appears to have had greater success with business groups. CHF works in 14 municipalities in Central Bosnia, relying upon voluntary efforts of both associations and municipalities.

Apart from these activities, CEELI has successfully tested the Bosnian FOIA by establishing a Public Advocacy Center (CSpi). CEELI claims a 75 percent response rate to about 200 FOIA requests. CSpi is now training NGOs and UNHCR's legal aid centers (over 20) to use the FOIA, increasingly for employment cases.

The World Bank is drafting a law on the standards of inspection. This will require an effort to bring the stakeholders together for an implementation plan. DFID is working on business registration, lowering steps from 14 to 7, and changing inspection rules to rely more on fines instead of closure, and allow businesses to open while awaiting inspections (except in health risk cases).

### C. Recommendations

Goal: To strengthen administrative laws, procedures, and practices in order to improve access to justice.

Local Partners: Municipal governments, NGOs, media, MOJs

Donor Role: The current USAID administrative law project, which is limited in scope to the Federation, should be monitored and, if successful, should be expanded nationally. In particular, strengthening transparency in rulemaking at the municipal level, improving the application of administrative law at the municipal and basic court

levels, improving the municipal and cantonal inspectorate systems, expanding law clinic programs, and providing additional legal training to judges and other professionals should be adopted countrywide. A part of monitoring the success of these programs may involve conducting surveys or focus groups to test the pulse of the country with respect to the state of service delivery. Success may also indicate a greater emphasis on public education campaigns, but only to reinforce concrete results. An essential component of administrative and municipal reform efforts in the ROL sector is citizen advocacy. One USAID program has successfully established a legal advocacy center for pursuing free access to public information by NGOs, journalists, and other citizens. Such activities should be expanded and should be incorporated into administrative law projects, which, among other things, seek to improve the access to justice at the grassroots level. Similar advocacy initiatives could be structured to include other segments of society and address other legal needs. "Supply side" reform may be furthered through USAID administrative law projects that rationalize procedures and laws in a given sector. A project to codify and rationalize the laws and regulations in that sector (e.g., urban policies that affect business or housing) should be considered.

Timeframe: 2004-2008

## **VIII. LEGAL EDUCATION**

### **A. Overview**

The legal education system in BiH, as is the case with higher education more broadly, is in a state of crisis. It is essential that the legal and donor communities act quickly to address the problems facing the legal education system: if the people who are to become the country's future judges, lawyers, prosecutors, and legislative drafters are not well trained, all the other structural reforms being introduced by the international community will be for naught.

The first problem is that there are too many law faculties for a country the size of BiH. Before the war, there was the one school in Sarajevo, one in Banja Luka, one in Mostar, and one in Tuzla. Since the war, another school was opened in Mostar, another in Srpsko Sarajevo, one in Bihac, and one in Brcko. In addition, the main school in Sarajevo has opened a branch in Zenica. This means that there are eight (or nine) law faculties. It is unclear how these schools are accredited, but they are all state supported. Interestingly, despite the relatively large number of schools, few students actually complete their programs and graduate after the usual four year program. At Banja Luka, for example, there are about 200 students in each class, but only 60 graduate each year. Similarly, in Sarajevo, about 250 students register each year, but only 50 graduate. While some level of attrition is to be expected, the drop out rate seems extraordinarily high, which is especially problematic considering that BiH needs more, not fewer, well trained judges and lawyers. The high number of students who enroll (there are estimated to be about 8,000 law students in the country) also means that the classes are too crowded, there are too few teaching materials and library resources, and there are too few capable professors to go around. The BiH Ministry of Education needs to implement a more stringent accreditation program to

ensure that these schools can provide appropriate training, and that law school graduates obtain the education they need to practice law.<sup>32</sup>

Another important problem is that the curriculum is antiquated, most of it dating to the pre-war (i.e., Yugoslav) period. An insufficient emphasis is placed on human rights, EU law, and commercial law issues such as bankruptcy, competition law, intellectual property, etc. There are, of course, too few teachers to address these emerging topics, or write the needed textbooks. Apparently, for example, there is only one professor in the country truly knowledgeable regarding intellectual property, and she is past retirement age. It will, however, be difficult to attract young and talented lawyers to the academy because of the low salaries. According to the dean at Banja Luka, full professors are paid 570 KM, and associate professors are paid 530 KM, but the government wants to cut salaries by 24 %.

A third concern is that the teaching methodology is based largely on rote memorization and recitation back. There is little role playing, problem solving, or interactive education. Soros is supporting a program to introduce clinical legal education, and there are now six clinics at Sarajevo and three in Banja Luka, which cover matters such as human rights, international law, civil law, criminal law, family law, labor law. Soros is planning on opening two clinics in Mostar this year, on criminal law and human rights (interestingly, this clinic will take students from both law schools, which are ethnically segregated, and put them together in one clinic). IRIS is also seeking to establish an administrative law clinic at Sarajevo. These initiatives are to be applauded, but they do have some limitations. First, students do not usually get academic credit for their work in the clinics, which would require a change in the official curriculum. Second, because of the lack of student practice rules, the students do not appear in court. Given their youth as compared to American law students, this may not be unreasonable, but it does limit the capacity of the clinics to address the access to justice issue. Only some of the clinics provide advice to citizens (e.g., the labor law clinic), and most simply provide skills training in the classroom and/or place students with NGOs or government bodies (such as the HRC or one of the Ombudsmen). Finally, the impact is limited because the clinics are restricted (as they should be, in order to provide a meaningful pedagogical experience) to about 20 students per clinic. On the other hand, the students do seem to be obtaining some practical skills and experience, the schools are providing space and some supplies, and some assistance is being rendered to citizens.

The fourth problem is a paucity of material resources, such as computers and books. This, as with the problem of professorial salaries, is related to the overall problem of insufficient funding. As noted, each of the schools are state supported – there are no private law faculties in BiH. The Dean at Banja Luka reported that the government is supposed to provide the school with 37,000 KM per month, but that it is not always paid and that, in fact, the school had not received that funding for the past three months. The school does collect some tuition, but pursuant to government

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<sup>32</sup> It should be noted, of course, that legal education in BiH is not at the graduate level, but rather is an undergraduate degree, and that not everyone who attends or even graduates from the law faculties practice or intend to practice law. While the team did not obtain any statistics on this, it was reported that many go to work for government agencies or become court clerks, etc. On the other hand, some students may obtain an MA, which will take an additional four years, or a PhD., which can take a total of nine years to obtain.

decision, 100 students can attend without paying anything (based on how well they did in high school). While all other students are supposed to pay about 400 KM per year, even for them there are many exceptions: the children of disabled, of veterans, refugees, displaced people, etc. may either pay nothing or half the usual amount.

#### B. Donor Activities

Other than the law school clinics described above, legal education has not been a major emphasis of the donor community. Although OHR reported that it is not likely to become a focus for them (other than what might be required legislatively), the COE, with EC funding, will conduct an in-depth assessment, probably beginning in September, on legal education. A reform program that will foster institutional change, involving the deans, rectors, and Ministry of Education, would ensue. The first year (maybe beginning in 2004) of that program would link schools in BiH with schools elsewhere in Europe, introduce a new curriculum, and foster new procedures for teaching and administering examinations. Accreditation issues would also be looked at during this period. The second year would see more equipment being provided to build libraries and computer labs.

Currently, CEELI (with funding from the U.S. State Department) is implementing the Balkan Law School Linkage Initiative. Under this program, law schools in the region are linked with U.S. law schools, and teacher and students exchanges are funded. In BiH, Sarajevo is linked with the Baltimore School of Law, and Banja Luka with the South West Texas School of Law in Houston. CEELI is also supporting a moot court program in BiH.

It is also worth noting that the World Bank is looking at the issue of higher education overall, which may have an impact on efforts at legal education reform.

#### C. Recommendations

Although addressing the problems that plague the legal education system is critical, the USG should not become too deeply involved in legal education reform, pending the full assessment that the Council of Europe (COE) will soon conduct. Once that report is issued, the USG should review it to determine whether cooperative interventions would be appropriate. In the meantime, USG programs should, at the very least, ensure that professors have copies of the new procedural codes, and commentaries on them, and that they are teaching these codes in the classroom. One of USAID's current grantees or contractors should convene a series of train the trainers sessions on these new codes to make sure that the professors understand them and will teach them. The USG could also provide some transitional support, pending the introduction of the COE program, by endowing a competition of some kind for which law professors would apply for funding to develop new courses on emerging topics, in particular relating to commercial law. This could be implemented by existing USAID programs.

## **APPENDIX A**

### **PERSONS INTERVIEWED**

#### **Attorneys**

Maric Branko  
Mirsad Sipovic  
Sarajevo

Emir Colakovic  
Velida Imamovic  
Zenica Bar Association

Ekrem Galijatovic  
President  
Federation Bar Association

Zlatko Knezevic  
Amor Bukic  
RS Bar Association

#### **Government**

Saud Filipovic  
Minister of Justice  
RS

Slobodan Kovac  
State Minister of Justice

Borjana Kristo  
Federation Minister of Justice

#### **Journalists**

Eldin Karic  
Start Magazine

Boro Kontic  
Media Centar

#### **Judiciary**

Vlado Adamovic  
President  
Federation Association of Judges

Zijada Alihodzic  
President



Zenica Cantonal Court

Mirko Boskovic  
President  
Constitutional Court of the Federation

Mirko Dabic  
President  
Association of Judges and Prosecutors of the RS

Lukic Dragoslav  
President of the Steering Board  
RS JTC

Amir Jaganjac  
Cantonal Court  
Sarajevo

Dusan Kalember  
Secretary General  
Constitutional Court of BiH

Sadudin Kratovic  
Federation SC

Castimir Mandaric  
President  
Mostar Cantonal Court

Salem Miso  
State Court  
Sarajevo

Martin Raguz  
President  
Court of BiH

Jovo Rosic, President  
Vladimir Raosavljevic, President of the Criminal Division  
RS SC

Gojko Vukotic, SC  
Bajagic Zdravko, SC  
Obren Buzanin, DC  
Stanisic Jadranka, DC  
Svetlana Bijeclic, Basic Court  
Romcevic Snjezana, Basic Court  
RS Judges

## NGOs

Goran Bubic  
Lex International  
Banja Luca

Nedjo Milicivic  
Center for Civil Society

Drago Seslija  
Association of Citizens Democratic Initiative of Sarajevo Serbs

## Ombudsmen

Franjo Crnjac  
Branka Kolar  
Zlatko Kulenovic  
RS

Vera Jovanovic  
Esad Muhibic  
Branka Raguz  
Federation

Amra Kazic  
Mostar Office of the Federation Ombudsman

## From OHR and IJC

Mirela Gruenther  
Training Coordinator, Rule of Law Pillar  
Office of the High Representative (OHR)

Georg Halbach  
Criminal Institute and Prosecutorial Unit (CIPRU)  
Office of the High Representative (OHR)

Eija Iivonen  
Head of Restructing Department  
Independent Judicial Commission (IJC)

Zoran Pajic  
OHR

John Peyton  
Vice President  
High Judicial and Prosecutorial Councils (HJPC)

William Potter  
Deputy Head of Rule of Law Pillar

Office of the High Representative (OHR)

Rakel Surlen  
Director  
Independent Judicial Commission (IJC)

Police

Petar Franjic  
Station Commander  
Sarajevo

Professors

Jasna Baksic  
Assistant Professor  
University of Sarajevo Faculty of Law

Milorad Zivanovic  
Dean  
Banja Luka Faculty of Law

Prosecutors

Mustafa Bisic  
Cantonal Prosecutor  
Sarajevo

Marinko Jurcevic  
BiH Prosecutor

Branka Milosevic  
Puvavic Milan  
Marinka Kovacevic  
RS Prosecutors

From the U.S. Government

Brain Fahey  
Senior Banking Specialist  
USAID

Chris Hoh  
Deputy Chief of Mission  
U.S. Embassy

Emir Mehmedbasic  
Economic Restructuring Office  
USAID/Bosnia

Michael Henning  
Marc Ellingstad  
Marinko Sakic  
Democracy Office, USAID/Bosnia

Laura Neubauer  
Resident Legal Advisor  
U.S. Department of Justice

Richard Prosen  
Political Officer  
U.S. Embassy

Jim Tillman  
ICITAP

Other International Community

Andy Boname, Chief of Party  
Alice Thomas, Deputy Chief of Party  
Diana Ruzic, Assistant Chief of Party  
Administrative Law and Procedural Systems Reform Project  
IRIS

Charles Briefel, Deputy Director of Human Rights  
Katy Thompson, Legal Advisor – Rule of Law  
Georgette Gagnon  
Rodri Williams  
Organization for Security and Cooperation in Europe (OSCE)

Hugh Chetwynd  
Deputy Special Representative  
Council of Europe

Richard Robinson, Cooperative Housing Foundation, Municipal and Economic  
Development Initiative (MEDI); PADCO

Alan Holmes, Head of DFID Office  
Rebecca Johnson, Project Manager  
Claire Howard, Principal Consultant (Atos KPMG Consulting)  
Sead Traljic, Consultant  
British Department for International Development (DFID)

Mervan Mirascija  
Program Coordinator – Law  
Open Society Fund (Soros)

Therese Nelson, Executive Officer  
Ulrich Garms, Registrar  
Human Rights Chamber (HRC)

Veronica Perzanowska, First Secretary  
Slavenka Perkovic, Program Officer  
Swedish International Development Agency (SIDA)

Holger Schroder, Deputy Head of Operations  
Alexis Hupin, Task Manager  
Paraskevi Nazou, Task Manager  
Anthony Nott  
European Commission

Senad Slatina  
Mark Wheeler  
International Crisis Group

Ulrich Solte  
Legal Advisor, Economic Law Reform  
Deutsche Gesellschaft fur Technische Zusammenarbit (GTZ)

Pat Wujcik, Country Director  
Erik Nils Larson, Liaison, Criminal Law Program  
Neboja Milanovic, RS Staff Attorney  
ABA/CEELI

**APPENDIX B**  
**DOCUMENTS REVIEWED**

Legislation

The Constitution of BiH

Criminal Procedure Code of BiH

Law on the High Judicial and Prosecutorial Council of BiH

Law on the High Judicial and Prosecutorial Council of the Federation of BiH

Law on the High Judicial and Prosecutorial Council of the RS

Law on Ministries and Other Bodies of Administration of BiH

Law on Courts of BiH

From Government and Judicial Officials

BiH Government: “Jobs and Justice: Our Agenda”

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Chart of Federation SC Caseload

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Periodic Report No. 1 (September 2 – December 31, 2002)

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Chart: The Gap between Cases Registered and Cases Resolved, 1996 – January 31, 2003

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“Opinion on Legal Aspects of the Future of the HRC and its Proposed Merger with the Constitutional Court of BiH” (November 7, 2002)

Annual Report (2001)

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“Restructuring the Court System: Report and Proposal” (August 15, 2002)

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“Access to Legal Information, a Report by the Swedish International Development Agency” (October 2002)

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“Prosecuting Corruption: A Study of the Weaknesses of the Criminal Justice System in BiH” (JSAP Thematic Report 8) (November 2000)

“Political Influence: The Independence of the Judiciary in BiH” (JSAP Thematic Report 9) (November 2000)

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Department of State Report on Human Rights Practices (March 4, 2002)

ICITAP BiH Program Management Plan

USAID SEED Reports (1999 – 2002)

USAID BiH Strategic Plan (undated)

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ABA/CEELI, “Judicial Reform Index for BiH” (October 2001)

ABA/CEELI Workplan, May 1, 2002 – September 30, 2003

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ABA/CEELI Quarterly Report (October 1 – December 31, 2002)

Administrative Law and Procedural Systems (ALPS) Reform Project in BiH, Year One Final Workplan (February 4, 2003)

Other Reports and Miscellaneous Documents

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Council of Europe Priority Actions for 2003-04-03

Danish Center for Human Rights, “Making Justice Work: Scoping for Institutional Support to Ministries of Justice, BiH” (for DFID) (October 2002)

International Crisis Group, “Courting Disaster: The Misrule of Law in BiH” (March 25, 2002)

Open Society Institute, “Lessons Learned on Reform in BiH”